PROFESSIONAL
PROGRAMME

GROUP 1
PAPER 2

DRAFTING, PLEADINGS & APPEARANCES

PART I - DRAFTING AND CONVEYANCING

PART II - PLEADINGS AND APPEARANCES

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

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STUDY MATERIAL

PROFESSIONAL PROGRAMME

DRAFTING, PLEADINGS & APPEARANCES

GROUP 1

PAPER 2

THE INSTITUTE OF
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PROFESSIONAL PROGRAMME

DRAFTING, PLEADINGS & APPEARANCES

Drafting, in legal sense, means an act of preparing the Legal Documents like agreements, contracts, deeds, etc. A proper understanding of drafting cannot be realised unless the nexus between the Law, the facts and the language is fully understood and accepted. Drafting of deeds and documents for various purposes in a company usually forms part of multifacet duties of the Company Secretary. For this purpose, the course contents of this study material have been so designed as to provide practical orientation and develop necessary acumenship in drafting legal documents. Only those deeds and documents have been included which are of direct relevance to the work of a Company Secretary. Further, the literature available on the subject has been found to be unwieldy and it has, therefore, been our endeavour to make the study material tailored made. Every effort has been made to provide a self-contained material and an integrated approach has been adopted throughout.

While writing the study material, relevant provisions of the various Acts and Rules made thereunder have been kept in mind. Except where found absolutely necessary, text of the provisions of Bare Act(s), Rule(s), Order(s), etc. have not been produced. This paper presupposes knowledge of substantive law; therefore, students are advised to have thorough knowledge of the same by referring to various Acts mentioned at appropriate places in this study material. This paper also warrants continuous updation in terms of substantive and procedural laws as well as latest judicial pronouncements. Moreover, drafting of petitions, deeds and documents is an art and even acquiring working knowledge in this demands application of skills of higher order. Students are, therefore, advised not only to master the principles and applications of drafting and pleadings, but also keep themselves abreast of latest developments by regularly resorting to reading of at least one of the leading English Newspapers and additional source materials concerning corporate world which are published from time to time.

This study material has been published to aid the students in preparing for the Drafting, Pleadings and Appearances paper of the CS Professional Programme. It is part of the educational kit and takes the students step by step through each phase of preparation emphasizing key concepts, principles, pointers and procedures. Company Secretaryship being a professional course, the examination standards are set very high, with focus on knowledge of concepts, their application, procedures and case laws, for which sole reliance on the contents of this study material may not be enough. This study material may, therefore, be regarded as the basic material and must be read alongwith the Bare Acts, Rules, Regulations, Case Law.

The legislative changes made upto May 31, 2025 have been incorporated in the study material. In addition to Study Material students are advised to refer to the updations at the Regulator's website, supplements relevant for the subject issued by ICSI and ICSI Journal Chartered Secretary and other publications. Specifically, **students are advised to read "Student Company Secretary" e-Journal which covers regulatory and other relevant developments relating to the subject,** which is available at academic portal *https://www.icsi.edu/student-n/academic-portal/*. In the event of any doubt, students may contact the Directorate of Academics at academics@icsi.edu.

The amendments to law made upto 31st May of the Calendar Year for December Examinations and upto 30th November of the previous Calendar Year for June Examinations shall be applicable.

Although due care has been taken in publishing this study material, the possibility of errors, omissions and/or discrepancies cannot be ruled out. This publication is released with an understanding that the Institute shall not be responsible for any errors, omissions and/or discrepancies or any action taken in that behalf.

Important Note:

The new criminal laws i.e. Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhiniyam 2023 have repealed Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws) respectively.

Therefore, by virtue of Section 8 of General Clauses Act 1897, the references to the old criminal laws, unless a different intention appears, be construed as references to the provision of new criminal laws.

PROFESSIONAL PROGRAMME

Group 1

Paper 2

DRAFTING, PLEADINGS & APPEARANCES

SYLLABUS

OBJECTIVES:

To equip with practical aspects of drafting various types of agreements, documents, applications to the quasi-judicial bodies including Tribunals and to provide competency for pleading and appearances.

Level of Knowledge: Expert Knowledge

Detailed Contents

PART I : DRAFTING AND CONVEYANCING (70 MARKS)

1. **Types of Documents:** Deeds ● Agreements ● Contracts ● Difference between Deeds, Agreements and Contracts ● Circulars ● Public Notices ● Standard Bids and Tenders ● Letter of credit, bank guarantee, and performance guarantee ● Bye Laws ● Show Cause Notices ● Standing Orders ● Bond
2. **General principles of Drafting:** Drafting ● Conveyancing ● Distinction between Drafting, Conveyancing and Contract ● General Principles of Drafting all sorts of deeds and conveyancing ● Basic Components of Deeds ● Important Terms and Conditions in the Agreement ● Broad Outlines of deed ● Guidelines for use of particular words and phrases for drafting and conveyancing ● Use of Appropriate words and expressions ● Aids to Clarity and Accuracy ● Endorsements ● Stamping of the Deeds
3. **Laws relating to Drafting and Conveyancing:** Communication, acceptance and revocation of proposals ● Essentials of Contracts ● Contingent Contracts ● Recovery of specific immovable property ● Specific Reliefs ● Contracts not specifically enforceable ● Declaratory Decrees ● Sale ● Mortgage ● Lease ● Licence ● Gift ● Actionable Claims ● Compulsory and Optional registration of Documents ● Time and Place of Registration ● Effects of Registration and Non-registration of Documents ● Adjudication and Payment of Stamp Duty ● Law relating to Power of Attorney
4. **Drafting of Agreements, Deeds and Documents:** Deeds of Power of Attorney i.e. General Power of Attorney and Special Power of Attorney ● Lease Deed ● License Deed ● Mortgage Deed ● Gift Deed ● Sale Deed and Agreement to sell ● Alternate Dispute Resolution(ADR) Agreements ● Employment Contracts ● Settlement Agreements ● Drafting of Bye-Laws of Societies ● Drafting of Standing Orders ● Reply of Show Cause Notices ● Notice under Section 138 of the Negotiable Instruments Act ● Reply to Legal Notice under Section 138 of Negotiable Instruments Act
5. **Drafting of Commercial Contracts:** Limited Liability Partnership Agreement ● Joint Venture and Foreign Collaboration Agreements ● Joint Development Rights Agreements ● Service Agreements ● Dealership Contracts ● Distributorship Contracts ● Franchise Agreements ● Outsourcing Agreements ● Non-disclosure Agreements ● E-Contracts

6. **Documents under Companies Act, 2013:** Deed of Transfer of Undertakings ● Mortgage Deed ● Debenture Trust Deed ● Share Purchase Agreements ● Shareholders Agreements ● Underwriting and Brokerage Agreements ● Resolutions – Appointment of KMPs, Adoption of Financial Statements, Distribution of Dividend, Corporate Social Responsibility, Inter- corporate Loans, Borrowings and Investment by Company, Approval of Related Party Transactions

7. **Art of Opinion Writing:** Understanding facts of the case ● Application of relevant Legal Provisions to the facts ● Research on relevant case Laws ● Discussion ● Form of Opinion ● Opinion writing ● Case Study on Opinion writing

8. **Commercial Contract Management:** Negotiation of best commercial and operational terms with vendors ● Create, analyze and execute contracts ● Contract-related documents and correspondence ● Maintenance of contract documents ● Compliance with mandatory provisions ● Tracking of contracts and extend, renew, and close ● Build and maintain relationships with vendors, clients ● Control over any charges for services out of the scope of the contract ● Actions in case of Breach of Contracts

PART II : PLEADINGS AND APPEARANCES (30 MARKS)

9. **Judicial & Administrative framework:** Types of Courts ● E-Courts ● Types of Tribunals/Quasi-Judicial Bodies ● Jurisdiction ● Procedures ● Reference, Review and Revisions ● Applicability of Civil Code on tribunals ● Types of Trials ● Appellate forums

10. **Pleadings:** History of Pleadings ● Meaning of Pleadings ● Object of Pleadings ● Fundamental Rules of Pleadings ● Suits ● Suits for temporary and permanent injunctions ● Plaint Structure ● Description of Parties ● Written Statements ● Interlocutory Applications ● Petitions ● Revision Petitions ● Execution Petition and Memorandum of Appeal and Revision ● Writ Petition ● Special Leave Petitions ● Affidavit ● Drafting of Affidavit in Evidence ● Arguments on Preliminary Submissions/Merits ● Legal Pleadings and Written Submissions ● Applications ● Witness ● Improper Admission ● Rejection ● Appeal ● Review ● Undertakings ● Indemnity Bonds ● Legal Notices ● Response to Legal Notices

11. **Art of Advocacy and Appearances:** Professional Etiquettes ● Court Craft ● Preparatory Points ● Duty towards Court, Client and Opponent ● Important Principles of Advocacy ● Advocacy Tips ● Pre-requisites for entering appearances ● Appearance Etiquettes

12. **Applications, Petitions and Appeals under Companies Act, 2013:** NCLT & NCLAT Rules ● Appeal to NCLT against notice of refusal to transfer shares ● Application to NCLT for direction for calling the AGM and other meetings ● Application for Compromise and Arrangements including mergers and amalgamations ● Application in case Oppression and Mismanagement ● Application for Class Actions ● Application for compounding ● Adjudication and E-adjudication ● Petition for Winding up ● Appeals before NCLAT ● Case Studies on Mergers & Amalgamations, Oppression and Mismanagement, Class Action, Compounding, winding up

13. **Adjudications and Appeals under SEBI Laws:** Adjudicating Authorities ● Process including Show Cause notices, Reply, Personal Hearing ● SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules ● Penalties ● Compounding ● Consent Terms ● Settlement Proceedings ● Appeals to Securities Appellate Tribunal ● Constitution and Jurisdiction of Securities Appellate Tribunal(SAT) ● Procedure and Powers of SAT ● Procedure as per Securities Appellate Tribunal (Procedure) Rules ● Adjudication ● Appeals ● Case Studies on Settlement Proceedings, Insider Trading and Listing Obligation & Disclosure Requirements

14. **Appearance before other Regulatory and Quasi-judicial Authorities:** Appearing before Tribunals/ Quasi-judicial Bodies such as NCLT/SEBI/CCI/TRAI/Tax Authorities ● Appearing before Appellate Tribunals and authorities such as RD/SFIO/ NCLAT/ RBI/ED/Stock Exchange/RERA/RERA Appellate Tribunal/IPR Authorities ● Case Study on Corporate Insolvency Resolution Process ● Case study on combinations under the Competition Act, 2002

ARRANGEMENT OF STUDY LESSONS
DRAFTING, PLEADINGS & APPEARANCES
GROUP 1 • PAPER 2

Part I : Drafting and Conveyancing

S. No.	Lesson Title
1.	Types of Documents
2.	General principles of Drafting
3.	Laws relating to Drafting and Conveyancing
4.	Drafting of Agreements, Deeds and Documents
5.	Drafting of Commercial Contracts
6.	Documents under Companies Act, 2013
7.	Art of Opinion Writing
8.	Commercial Contract Management

Part II : Pleadings and Appearances

S. No.	Lesson Title
9.	Judicial & Administrative framework
10.	Pleadings
11.	Art of Advocacy and Appearances
12.	Applications, Petitions and Appeals under Companies Act, 2013
13.	Adjudications and Appeals under SEBI Laws
14.	Appearance before other Regulatory and Quasi-judicial Authorities

LESSON WISE SUMMARY
DRAFTING, PLEADINGS & APPEARANCES

PART I : DRAFTING AND CONVEYANCING (70 MARKS)

Lesson 1: Types of Documents

The Word 'Document' contain various definitions under different laws. It can be in physical form or in electronic mode which contains the information of a particular matter. Documents include Deeds, Contracts, Circulars, Public Notices, Tenders etc. A key factor in the success of the organisation is the proficient drafting of documents. A Professional should adhere to the rules of drafting of documents.

It is expected that, at the end of this lesson, students will, *inter alia* be in a position to:

- Understand various type of documents a professional is required to draft
- Differentiate between Deeds, Agreements and Contracts
- Understand Letter of Credit, Bank Guarantee, and Performance Guarantee
- Understand Show Cause Notice (SCN)
- Bonds, Circulars, Bye Laws, Standing Orders etc.

Lesson 2: General principles of Drafting

Drafting is essential since it enables professionals to arrange ideas and thoughts in an understandable and comprehensible way. When writing a report, a proposal, or simply an email, or when a professional intend to explain his thoughts to others, this is very helpful. The corporate executives must have drafting and conveyancing knowledge in order to complete departmental documentation. With all the information available, an executive may create a better document by determining the relevance and importance of each topic that will be presented. It is essential to have knowledge about common principles in order to present a matter more effectively and efficiently.

The objective of the lesson is to introduce the students regarding:

- Meaning of Drafting
- Meaning of Conveyancing
- Differentiation Drafting and Conveyancing
- Basic Components of Deeds
- Use of suitable Words and Languages.

Lesson 3: Laws relating to Drafting and Conveyancing

Professionals are required to prepare, read, analyse and understand a variety of papers. In order to understand the documents, it is obligatory for a professionals to understand the basic laws relating to drafting and conveyancing. This lesson covers the basic laws a professional should know in order to understand the transaction taking place in business. These laws are designed to make sure that contracts and documents are formed correctly and the transactions complete the intention of maker. Additionally, the interests of all participants in the transaction, including lenders, purchasers and sellers are protected.

It is expected that, at the end of this lesson, students will, *inter alia* be in a position to understand:

- Communication, Acceptance and Revocation of Proposals
- Formation of Contracts
- Enforcement of Contracts
- Conveyancing of Properties
- Registration of Documents
- The requirement of Payment of Stamp duty
- Assignments of powers to attorney.

Lesson 4: Drafting of Agreements, Deeds and Documents

The expertise in drafting is a must for the professional. Through drafting a professional express one's thought process in writing. No other profession entail the ability of drafting more than Company Secretary Professionals. Every written word in a Company Secretary profession is precious, as it has the power to inform, instruct and persuade. Therefore, the documents including deeds and documents has to be carefully crafted so as to protect your client's interest and understandable to all who came across the document.

It is expected that, at the end of this lesson, students will, *inter alia* be in a position to understand and draft:

- Documents
- Power of Attorney
- Mortgage Deeds
- Sale Deed and Agreement to Sell
- Settlement Agreements
- Show Cause Notices and their replies.

Lesson 5: Drafting of Commercial Contracts

A well-written contract helps to safeguard the interests of all parties by detailing their responsibilities and obligations in detail. By doing this, future disagreements and misunderstandings may be avoided. The establishment of a legal foundation for the companies with the aid of a commercial contract may be advantageous in the case of any legal problems or disputes. A well-written contract may also guarantee that everyone is on the same page and understands the conditions of the agreement.

In conclusion, creating business contracts is essential for every company that wishes to build solid and long-lasting relationships with its partners, suppliers, and clients. A well-written contract may assist in safeguarding your company's interests, reducing risks, and making sure that everyone is on the same page.

It is expected that, at the end of this lesson, students will, *inter alia* be in a position to understand and draft:

- Limited Liability Partnership Agreements
- Dealership, Distributorship and Franchise Agreements

- Non-disclosure Agreements
- Formation of e-contracts.

Lesson 6: Documents under Companies Act, 2013

A professional has to draft many documents for a company during the active life of a company such as deeds for the purpose of conveyancing, Share Purchase and Transfer Agreements, Resolutions etc. These documents are sometimes required due to the requirements of the Law and sometime due to conduct of business. Both the aspects i.e. conduct of businesses by the companies and legal requirements are important for the survival and growth a company.

It is expected that, at the end of this lesson, students will, *inter alia* be in a position to understand and draft:

- Deed of Transfer of Undertakings
- Debenture Trust Deeds
- Shareholder Agreements
- Underwriting and Brokerage Agreements
- Drafting of various corporate resolutions such as Appointment of KMPs, Corporate Social Responsibility, Approval of Related Party Transactions etc.

Lesson 7: Art of Opinion Writing

A legal opinion is a written declaration made by a professional that is based on their expert knowledge of a certain legal principle. A person may wish to know the proper legal stance on a topic of interest or the chances that he or she would prevail in court if they file a lawsuit using the information they gave the expert. An authoritative legal opinion that adheres to the law is extremely valuable. When seen from a legal viewpoint, it can reveal where a party sits in a specific factual matrix and help avoid wasting time and money on pointless legal battles.

It is expected that, at the end of this lesson, students will, *inter alia* be in a position:

- To understand the cases of the clients
- To undertake research on a point of Law
- To apply legal provisions applicable
- To write opinions for the clients.

Lesson 8: Commercial Contract Management

Commercial Contract Management involves overseeing the development, negotiation, execution, and continuous oversight of agreements between two or more parties to make sure that their conditions are upheld. It entails overseeing every stage of the contract lifecycle, from writing to reviewing to negotiating to approval to implementation and monitoring. Protecting the interests of both parties, reducing risks, and ensuring compliance with legal and regulatory requirements are the main objectives of commercial contract management.

It is expected that, at the end of this lesson, students will, *inter alia* be in a position to understand:

- Brief of Business/Commercial Contracts
- Maintenance of Contract Documents
- Undertake Tracking of Contracts and Extension, renewal and closure

- Control over any charges for services out of the scope of the Contract
- Advice on Action to be taken in case of Breach of Contract.

PART II : PLEADINGS AND APPEARANCES (30 MARKS)

Lesson 9: Judicial & Administrative Framework

Our Judicial system is in charge of upholding justice, upholding the rule of law, and defending the rights of the citizens. It is also responsible for interpreting and enforcing the law, while the Administrative branch is in charge of interpreting and enforcing the law.

The legal system, law enforcement organizations and many regulatory entities that regulate various facets of society are also included in this framework. In general, the judicial and administrative system is necessary for maintaining a health society, defending citizen's rights, and establishing rule of law.

The objective of the lesson is to *inter alia* educate the students regarding:

- Types of Courts and their Jurisdiction
- Types of Tribunals/Quasi-judicial Bodies
- Jurisdiction of Judicial and Quasi-judicial Bodies
- Appellate Forums
- Applicability of Civil Procedure Code on Tribunals.

Lesson 10: Pleadings

Pleading means either a plaint or a written statement. The object of a pleading which aims at ascertaining precisely the points for contention of the parties to a suit. The rules of pleading and other ancillary rules contained in the Code of Civil Procedure have one main object in view. It is to find out and narrow down the controversy between the parties. The function of pleadings is to give fair notice of the case which has to be met so that the opposing party may direct his evidence to the issue disclosed by them. Pleadings are the basis of any lawsuit, and must be very cautiously drafted.

It is expected that, at the end of this lesson, students will, inter alia be in a position to understand and draft:

- Pleadings
- Suits for temporary and permanent injunctions
- Execution Petition and Memorandum of Appeal and Revision
- Affidavit
- Petitions
- Legal Notices
- Legal Pleadings and Written Submissions.

Lesson 11: Art of Advocacy and Appearances

Company Secretaries represent their companies as authorised representatives before various Tribunals/Quasi-judicial bodies. In order to effectively provide outcomes to their clients while acting as an authorised representative before any Tribunal or Quasi-judicial body, they must understand the art of advocacy or court craft.

The objective of the lesson is to introduce the students regarding:

- Court Craft
- Important principles of Advocacy
- Appearance Etiquettes
- Pre-requisites for entering Appearance
- Guidelines for Professional Dress of Company Secretaries.

Lesson 12: Applications, Petitions and Appeals under Companies Act, 2013

The Ministry of Corporate Affairs has announced the formation of NCLT and NCLAT. The jurisdictions of Company Law Board, High Court and BIFR has been merged and given to a single forum i.e. NCLT. A Company Secretary in Practice can appear before NCLT and NCLAT for various purposes. Therefore, it is necessary for a Company Secretary to obtain thorough knowledge of NCLT and NCLAT Rules. Further, a Company Secretary should also be in a position to draft Applications, Petitions, and Appeals under Companies Act, 2013.

It is expected that, at the end of this lesson, students will, *inter alia* be in a position to understand:

- NCLT Rules
- NCLAT Rules
- Drafting of Application to NCLT for direction for calling the AGM and other meetings
- Drafting of Application in case Oppression and Mismanagement & Class Actions
- Drafting of Application for Compounding
- Drafting of Appeals to be filed before NCLAT.

Lesson 13: Adjudications and Appeals under SEBI Laws

The main objective of establishment of SEBI was to protect the interests of investors in securities and to promote the development of and to regulate the securities market. The severe penalties for non-compliance were outlined in the SEBI Act, 1992. A Company Secretary in Practice can appear before authorities such as SEBI and SAT. A Company Secretary can also represent the company in various matters such as Compounding, Adjudication etc.

It is expected that, at the end of this lesson, students will, *inter alia* be in a position to understand

- Penalties under SEBI Laws
- Enquiry Proceedings
- Settlement Proceedings/ Consent Orders Under SEBI Laws
- Compounding of Offences
- Adjudication by the Authorities
- Appeals before Securities Appellate Tribunal.

Lesson 14: Appearance before other Regulatory and Quasi-judicial Authorities

Similar to courts, quasi-judicial organisations and tribunals have the authority to hear and decide matters in their respective fields. They are referred to be quasi-judicial since they lack the complete authority of the court.

A Company Secretary may represent a company as an authorised representative before several quasi-judicial organisations such as Securities Appellate Tribunal, National Company Law Tribunal, Competition Commission of India, Telecom Regulatory Authority of India, National Company Law Appellate Tribunal, etc.

It is expected that, at the end of this lesson, students will, *inter alia* be in a position to understand:

- Procedure for Appearance
- Appearance under SEBI Act, 1992
- Appearance under the Income-tax Act, 1961
- Appearance before the IPR Authorities, etc.
- Appeals before various authorities.

LIST OF RECOMMENDED BOOKS & OTHER REFERENCES

DRAFTING, PLEADINGS & APPEARANCES

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PART I

DRAFTING AND CONVEYANCING

Types of Documents

Lesson 1

KEY CONCEPTS

■ Deeds ■ Agreements ■ Contracts ■ Tenders ■ Letter of Credit ■ Performance Guarantee ■ Bye Laws ■ Standing Orders

Learning Objectives

To understand:

- ➢ Various type of documents
- ➢ Deeds, Agreements and Contracts
- ➢ Advantages and essential ingredients of circulars
- ➢ Issuance of Public Notices
- ➢ Standard Bids and Tenders
- ➢ Instruments such as Letter of Credit, Bank Guarantee and Performance
- ➢ Preparation of Bye Laws
- ➢ Issuance of Show Cause Notices
- ➢ Standing Orders
- ➢ Bonds

Lesson Outline

- ➢ Deeds
- ➢ Agreements
- ➢ Contracts
- ➢ Difference between deeds, agreements and contracts
- ➢ Circulars
- ➢ Public notices
- ➢ Standard bids and Tenders
- ➢ Letter of Credit, Bank Guarantee, and Performance Guarantee
- ➢ Bye laws
- ➢ Show Cause Notice (SCN)
- ➢ Standing Orders
- ➢ Bonds
- ➢ Lesson Round-Up
- ➢ Glossary
- ➢ Test Yourself
- ➢ List of Further Readings
- ➢ Other References (including websites/video links)

REGULATORY FRAMEWORK

- General Clauses Act, 1897
- Companies Act, 2013
- Information Technology Act, 2000
- Indian Contract Act, 1872

INTRODUCTION

As per the general definition given in Collins Dictionary, A document is one or more official pieces of paper with writing on them. The term 'document' is so imperative and broad that many legislations have defined it differently befitting the intent of legislature behind the enactment of that statute.

General Clauses Act, 1897 has given an inclusive definition of document. According to section 3(18), "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter.

According to section 2(36) of the Companies Act, 2013 "document" includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form.

As per section 2(22AA) of Income-tax Act, 1961, "document" includes an electronic record as defined in section 2(1)(t) of the Information Technology Act, 2000 (IT Act). IT Act provides that "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

With reference to the Businesses documents it *inter alia* includes Deeds, Contracts, Circulars, Public Notices, Tenders etc.

Mostly, the definition given for the word document are inclusive in nature and volatile. They creates and conveys evidence for an event or transaction for easy functioning a business. It reduces misunderstanding and vagueness during operations of businesses.

DEEDS

In legal sense, a deed is a solemn document. Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability. To take for example Gift Deed, Sale Deed, Deed of Partition, Partnership Deed, Deed of Family Settlement, Lease Deed, Mortgage Deed and so on. Even a power of Attorney has been held in old English cases to be a deed. A bond is also included in the wide campass of the term deed.

For such an instrument covering so wide field it is difficult to coin a suitable definition. A deed may be defined as a formal writing of a non-testamentary character which purports or operates to create, declare, confirm, assign, limit or extinguish some right, title, or interest. Many authorities have tried to define the deed. Some definitions are very restricted in meaning while some are too extensive definitions. The most suitable and comprehensive definition has been given by Norten on 'Deeds', is as follows:

A deed is a writing –

(a) on paper, vallum or parchment,

(b) sealed, and

(c) delivered, whereby an interest, right or property passes, or an obligation binding on some persons is created or which is in affirmance of some act whereby an interest, right or property has been passed.

In Halsbury's Laws of England, a deed has been defined as "an instrument written on parchment or paper expressing the intention or consent of some person or corporation named therein to make (otherwise than by way of testamentary disposition, confirm or concur in some assurance of some interest in property or of some legal or equitable right, title or claim, or to undertake or enter into some obligation, duty or agreement enforceable at law or in equity or to do, or concur in some other act affecting the legal relations or position of a party to the instrument or of some other person or corporation, sealed with the seal of the party, so expressing such intention or consent and delivered as that party's act and deed to the person or corporation intended to be affected thereby."

A deed is a present grant rather than a mere promise to be performed in the future. Deeds are in writing, signed, sealed and delivered.

Deeds are instruments, but all instruments are not deeds.

AGREEMENTS

An agreement which is enforceable at law is called a contract. Generally, when a contract is reduced to writing, the document itself is called an agreement. Accordingly, there cannot be an agreement unless there are two or more parties that agree to perform certain acts or refrain from doing something. In other words, an agreement between the parties is an instrument whereby the parties freely agree to perform certain acts or refrain from doing something, unilaterally or bilaterally. The purpose of the instrument is to bind the parties to the terms and conditions agreed upon.

A company has to execute numerous commercial agreements and other contracts during the course of its business. But how many company executives possess the simple, easily cultivable, yet rare acumen of concluding their contracts precisely, comprehensively and unambiguously? It is very much desirable and useful to keep in view certain important points in regard to the drafting of contracts, particularly commercial and international trade contracts.

While preparing agreements it is necessary and important that the intention of the parties should be set forth explicitly so as not to leave any room for doubt or future controversy. The language should be simple and the words used should be definite and precise; the use of loose expressions such as "proper", "reasonable", should, as far as possible, be avoided.

CASE LAWS

The provisions of the Indian Contract Act, 1872 about the essential incident and legality of agreements (Sections 2 to 30) should be studied and nothing should be introduced or left out, which would make the agreement void. But, if the material terms of an agreement are clear and specific, omission of certain details, which can be worked out by consent of the parties or in its absence be settled by court will not invalidate the agreement (*Ramchandra v. Chinnubhai, AIR 1945 Mad. 10*).

Note: The agreement should, therefore, be drafted as deeds between the parties thereto. The old practice of drafting them as Deeds Poll should be discouraged.

Types of Agreements

A business has to enter into various types of agreements with different parties and have to execute various types of documents in favour of its clients, banks, financial institutions, employees and other constituents. Few type of Agreement and their purposes are as under:

1. **Sale/Purchase Agreements:** Sale and Purchase agreements are entered into by the parties for the purpose

of transfer to property. These agreements ensure that the property legally transferred and conveyed to the other party without dispute.

2. **Commercial Agency Agreements:** Sometimes businesses are conducted by traders not directly with their counterparts but through the agency of independent agents appointed for the purpose. Such agents would locate customers for the principal's goods and in certain conditions, would have an implied authority to deal with the goods of the principal, allow credit terms to customers and receive payment from the customers on behalf of the principal. Commercial Agency Contracts are entered into by organisations for running businesses though this mode of business operation.
3. **Collaboration Agreements:** When two parties join hands for exchange of technical know-how, technical designs and drawings; training of technical personnel of one of the parties in the manufacturing and/or research and development divisions of the other party; continuous provision of technical, administrative and/or managerial services, they are said to be collaborating in a desired venture. Commercial Agency Contracts are used in such scenarios.
4. **Arbitration Agreements:** The 'arbitration agreement' means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of defined relationship whether contractual or not. It may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
5. **Hypothecation Agreement:** Hypothecation agreement is a document by which legal property in goods passes to the person who lends money on them, but the possession does not pass.
6. **Outsourcing Agreements:** Outsourcing is the contracting out of a company's non-core, non-revenue producing activities to specialists. It differs from contracting in that outsourcing is a strategic management tool that involves the restructuring of an organization around what it does best - its core competencies.
7. **Agreement for Assignment:** An assignment is a form of transfer of property and it is commonly used to refer the transfer of an actionable claim or a debt or any beneficial interest in movable property. An important aspect of intellectual property laws deals with assignment agreements. A transfer of an actionable claim is usually called an assignment thereof. For eg. Assignment of Patents, Assignment of Trade Marks, Assignment of Copyrights, Assignment of Business and Goodwill etc.
8. **Shareholders' Agreements:** Shareholders' agreements (SHA) are quite common in business. In India, shareholder's agreement have gained popularity and currency only lately with bloom in newer forms of businesses. There are numerous situations where such agreements are entered into – family companies, JV companies, venture capital investments, private equity investments, strategic alliances, and so on. Shareholders' agreement is a contractual arrangement between the shareholders of a company describing how the company should be operated and the defining inter-se shareholders' rights and obligations.
9. **Employment Agreements:** They are entered into between parties for the purpose securing the availability of manpower for an organisation.

CONTRACTS

An agreement gives birth to a contract. As per Section 2(e) of the Indian Contract Act, 1872 "every promise and every set of promises, forming the consideration for each other, is an agreement. It is apparent from the definition that an agreement is based on a promise. According to Section 2(b) of the Indian Contract Act, 1872, "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. An agreement, therefore, comes into existence when one party makes a proposal or offer to the other party and that other party signifies his assent thereto.

Therefore, every contract is an agreement but not *vice versa.* Agreements in which the idea of bargain is absent and there is no intention to create legal relations are not contracts.

Example

The following are agreements but not contracts:

1. Agreements relating to social matters such as to go together to the cinema, or for a walk.
2. Domestic arrangements between husband and wife

DIFFERENCE BETWEEN DEEDS, AGREEMENTS AND CONTRACTS

	Deeds	*Agreements*	*Contracts*
Meaning	Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability	Every promise and every set of promises, forming the consideration for each other, is an agreement	An agreement enforceable by law is a contract
Mode	Preferable in writing	It may be oral or in writing	Preferable in writing
Purpose	Effecting a Right or Liability	Agreement on certain Act or Omission	Enforceability of agreements according to Law
Creation of records	Yes	Not necessary	Yes
Relation	Deed may be agreements and contracts	Agreements are not necessarily Deeds or Contracts	It succeeds Agreement
Example	Sale Deed, Lease Deed etc	Non-Disclosure Agreements, Joint Venture Agreements	Agreements reduced into writing and enforceable under any law

CIRCULARS

According to Cambridge dictionary, a circular is a letter or notice sent to a large number of people. The purpose of circulars is to disseminate the information to large number of individuals. Generally, circulars are in written form so as to create a permanent record of the information and the same may be accessed to by the individuals in present as well as in future. A circular may be issued and circulated in various modes but in present era, the prevalent mode in which circulars are issued are in electronic form such as by placing them at the website, sending them by emails etc. However, conventional method are still in operation such as circulating the written, typed or printed copies of circulars to individuals.

Circulars are issued by varied range of individuals and authorities. For example, A company may issue a circular to its employees for dissemination of a policy approved by the Board of Directors to be complied by the employees. Directors may issue a circular to the shareholders. Central Government may issue a circular for giving clarification on any point of Law or providing any other necessary information to public at large.

Important Points for drafting a circular

Following points are to be considered while drafting a circular:

1. **Issuing Authority:** It is important to mention the name of the issuing authority on the circular for communicating the position and authority of the addressor. It reduces the chance of confusion in addresses and increase the chances of observance.

2. **Details of Addressee:** It is essential to mention the details of addressees by name, designation etc. in circulars. The addressees are required to comply with the information specified a circular. Therefore, mentioning the details of addressees make the circulars effective.
3. **Subject:** The mention of subject in a circular ensures that the circular receives the required attention. This will make circular more effective and chances of avoidance gets reduced.
4. **Reference to Preceding information:** It is mandatory to mention the reference to the information already provided before the present circulars. It ensures the completeness of information and the addressee may understand the complete matter contained therein.
5. **Main Information:** The main purpose of the circular is to disseminate the information to selected group of individuals. The information should be complete and in understandable language leaving no chance of ambiguity.
6. **Source of Authority:** It is always preferable to mention the source of authority under which the signatory has issued the circular. This gives emphasis on observance of the circular and increases the chances of amenableness.
7. **Signature:** The signature on the circular makes it more reliable.

Advantages of Circular

The advantages of issuing circular are:

1. **Ease of dissemination of information:** Circulars play significant part in the development and easy working of the businesses of organisations. Through circulars the information is circulated with ease.
2. **Economical:** Circulars are economical way of dissemination of information effectively. Through circulars, large number of individuals may be reached.
3. **Expeditious:** Through circulars, important information can be disseminated to a large number of people expeditiously. Hence, it saves time and efforts of the authority.
4. **Less Efforts:** Issuing circular for dissemination of information requires less efforts and can produce upright results.
5. **Develop Consciousness:** Systematic and regular use of circulars for dissemination of information develop consciousness in the addressees and improves effectiveness.

Specimen Circular

General Circular No. ___________

File No. Policy – _______________

Government of India

___________________ (Name of the Ministry)

_________________________ (Address)

Dated: _____________

To,

The DGCoA,
All Regional Director,
All Regional of Companies,
All Stakeholders.

Subject: Clarification of holding of Annual General Meeting (AGM) Through Video Conference (VC) Or Audio Visual Means (OAVM)-reg.

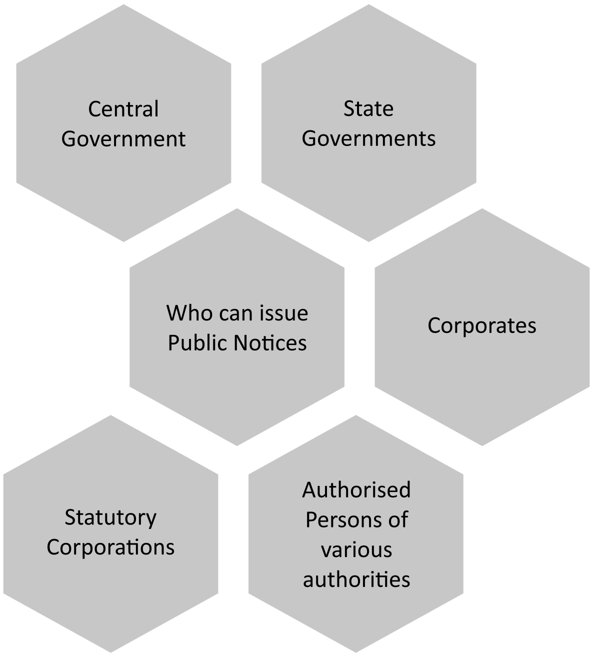
Sir/Madam,

1. In continuation to this Ministry's General Circular NO. 20/2020 dated 05,05.2020 and General Circular No. 02/2022 dated 05.05.2022 and after due examination, it has been decided to allow the companies whose AGMs are due in the year 2023, to conduct their AGMs on or before 30th September, 2023 in accordance with the requirements laid down in para 3 and para 4 of the General Circular No. 20/2020 dated 05.05.2020.
2. It is clarified that this General Circular shall not be construed as conferring any extension of time for holding of AGMs by the companies under the Companies Act. 2013 (the Act) and the companies which have not adhered to the relevant timelines shall be liable to legal action under the appropriate provisions of the Act.
3. This issues with the approval of the Competent Authority.

Yours faithfully,

PUBLIC NOTICES

Public notices are issued to convey information to large number of receivers that may called public. These are announcements made on a happening of a certain event of public interest. These may be issued by a Government Agency or by an individual including organisations. These are effective mode by which Public are informed about an important event. These may be issued for varied reasons such as providing information relating to , change in a law, Struck off the name of companies by Registrar of Companies, Status of Complaints by an authority, Call for Information regarding submission of information pertaining to 'Unclaimed Non-convertible Securities', Public Notices by companies etc. They are published though websites, newspapers or any other prevalent way. Public notices has gained admiration in present era due to public has become vigilant and technology is developed. They help the public being aware of recent developments and relevant information and as a result it improves transparency.


Central Government
State Governments
Who can issue Public Notices
Corporates
Statutory Corporations
Authorised Persons of various authorities

How to draft a Public Notice?

Drafting of Public notice

1. **Name of the Issuer:** A public notice should start from the name of organisation in order to be distinct, highlighted and attract attention.
2. **Details of the Issuer:** A public notice should also contain all the details of the organisation which a reader may require after reading. This will be helpful for the readers who wish to take necessary action or seek further details.
3. **Title Heading:** The heading of Public notice should be expressed in clear words so as to understand the purpose of issuing the public notice. This enables to attract the attention of the readers who are interested in the matter.
4. **Comprehensive Details:** The information is to be written in comprehensive manner. It is the duty of the draftsmen that it provides all the relevant details considering the available resources such as space for advertisement and cost involved.
5. **Statutory/Regulatory Requirement:** If a Public Notice is published in compliance of a statutory requirement, it is necessary to give the reference of the particular statutory/Regulatory provision along with the name of statute.
6. **Date and Place:** It is imperative to mention the date and place for issue of Public Notice.
7. **Designation of the issuer:** The designation of the issuer should be mentioned in the public officer. The mention of the name of the authority can also be published.

Public Notice of extract of standalone unaudited financial results for the quarter and nine months

XYZ Limited (Name of Company)

CIN: ______________________

Regd. Office: ____

Cont. No. __________________ Email id. __________________ Fax. No. __________________

Website__________________

EXTRACT OF STANDALONE UNAUDITED FINANCIAL RESULTS FOR THE QUARTER AND NINE MONTHS ENDED 31ST DECEMBER, ... (YEAR)

S. No.	*Particulars*	*Quarter ENDED*			*NINE MONTH ENDED*		*YEAR ENDED*
		31/12/21	*30/09/21*	*31/12/20*	*31/12/21*	*21/12/20*	*31/03/21*

The above is an extract of the detailed format of quarterly and nine months ended unaudited financial results filed with the stock exchange under Regulation 33 of the SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015. The full format of the Quarterly Financial Results are available on the stock exchange websites (www.......................com and www........................com) and also hosted on the Company's website at www...................................

Date

Place

_________________________ (Name)
For and On Behalf of Board of Directors
XYZ Limited

Note: Updated formats notified or approved by the concerned authority should be used wherever applicable.

Specimen Public Notice

___________________ (Name of the Exchange)

__________________________ (Address of the Exchange)

NOTICE

Notice is hereby given that the following Trading Member of the _________ Stock Exchange has been expelled from the membership of the Exchange under Rules 1 and 2 of Chapter IV of Bye Laws and declared defaulter.

Sr. No.	*Member Name*	*SEBI Registration No.*	*Date of declaration of Defaulter*	*Date of Expulsion*

The Constituents of the above-mentioned member are hereby advised to lodge claims, if any, in the prescribed claim form, against the above-mentioned within 3 months from the date of this notice.

All claims submitted by investors will be considered for Processing if found due and payable in accordance with Rules, Byelaws, Regulations, guidelines etc. of the Exchange, SEBI circulars and Regulations and the maximum compensation limit per investor is ₹ 25 lakhs out of the Investor Protection Fund.

The claim can be lodged online on the Exchange portal _____________ where the relevant documents can be uploaded. A sample claim form and FAQ is made available on the Exchange website _________________ for the convenience of the claimants. The claimants who have already submitted From A need not file a separate Claim against the said member.

Alternatively , the claim form, duly filled and signed, along with the relevant documents may also be sent in Physical form to the Defaulters' Section of the Exchange at ____________________ (Address). For this Purpose, the format of the Claim from may be downloaded from ____________________ or obtained from the corporate office or the regional / branch offices of the Exchange. However, the Exchange urges all claimants to make use of the online claim lodgment facility as mentioned above for better tracking of your claims.

In case of any queries you may contact us on ________________ or on toll free number ___________________.

For _______________________ (Name of Stock Exchange)

Chief Manager

Defaulter's Section

Place: _________

Date: __________

STANDARD BIDS AND TENDERS

As per the Cambridge dictionary, tender is a written or formal offer to supply goods or do a job for an agreed price. It refers to an invitation to offer (bid) for a purpose. The process of inviting bids for tenders have been initiated frequently by the organisations for large projects. Tendering processes encourage the availability of goods or services on competitive prices. The tendering process becomes open for all the eligible bidders thereby ensuring the competitive prices. It also stimulates the availability of the resource required in a timely manner. The process of tendering is formal and legally binds the person entering into the contract after awarding of tender. The process of inviting tender empowers the Tender issuing authority to finalise the terms and conditions of the tender independently. However, the conditions of the tender should comply with the statutory, regulatory requirements, should not be unreasonable and arbitrary.

CASE LAWS

In the case of *Tata Cellular v. Union of India*, it was observed that the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts. Further, as laid down in *Tata Cellular and New Horizons cases*, the tender conditions cannot ordinarily be subjected to judicial scrutiny, but if the tender conditions are so arbitrary and no procedure was prescribed for evaluating the standards or the tender conditions do not satisfy Wednesbury principle of unreasonableness (See Associated *Provincial Picture Houses Limited v. Wednesbury Corporation, (1948) 1 KB 223 = (1947) 2 All ER 680*, followed and explained in *Om Kumar v. Union of India, (2001) 2 SCC 386*, besides many other cases), they shall be deemed to be irrational and as a necessary corollary arbitrary to be cursed with invalidation under Article 14 of the Constitution.

Important considerations for preparing a document for Tendering Process

1. **Name and address of the organisation:** The name and address of the organisation be mentioned on the initial page of the document.
2. **Subject of the document:** The subject of the tender documents to be mentioned in clear and comprehensive manner in order to attract the attention of the Bidder.
3. **Index of the tender document:** The index of the documents can make the document convenient for the prospective bidder.
4. **Important dates and necessary information:** The information such as Tender Publication Date, Last date and time for sending Pre-Bid Queries in writing, Cost of Tender, Earnest Money Deposit, Pre-Bid Meeting date, time & venue, Last Date & address of Submission of Bids, Date, time & Venue of opening of Technical Bids and Financial Bids, contact details etc. should be provided in the tender document.
5. **Disclaimer Clause:** A disclaimer clause with respect to reservations or observation on the tender documents should be placed in the tender document.
6. **Job Description:** The job description in details should be mentioned in the tender document in order to acquaint prospective bidders with the requirements attached with the Job and evaluate and prepare their bids accordingly.
7. **Division of tender documents in parts:** The tender document be preferably prepared asking for Bid submissions in two parts i.e. Technical Bid and Financial Bids.
8. **Fees and Deposits:** The tender document should mention the fees and deposits commensurating the

nature and quantum of work. The cost of the tender document may be required from the prospective bidder. Further, the provisions relating to Earned Money Deposit (EMD) and Security Deposit are also to be placed in the tender document.

9. **Conditions for forfeitures of EMD:** The clause providing for the circumstances in which EMD may be forfeited to be mentioned in the tender document. The general conditions in which EMD be forfeited are as under:
    i. If the bidder withdraws its bid;
    ii. the selected bidder delays or does not accept the Purchase / Work Order;
    iii. the selected bidder fails to supply goods / services as per the terms of the Tender or fails to execute Purchase / Work Order.
10. **Pre Bid Meeting:** Pre Bid Meetings be conducted in order to provide any clarification sought on the tender.
11. **Scope of Work:** The scope of work in details be mentioned in the tender documents.
12. **Mention of Technical and administrative requirements:** The technical and administrative requirement be mentioned comprehensively in order to prevent the halt in the Job at the later stage. The document should be clear and specific with respect to technical and administrative requirements for performing the Job.
13. **Eligibility Criteria:** Essential Requirements are to be mentioned in the tender document.
14. **Necessary forms and documents:** Formats such as of Technical Bids, Financial bids, past experience of the bidder, Tender Acceptance Letter, Standard Terms and Condition of Agreement may be mentioned in the tender document. Further, a list of document required to be attached in the tender document may also be provided in the document.

LETTER OF CREDIT, BANK GUARANTEE, AND PERFORMANCE GUARANTEE

Letter of Credit

Letter of Credit ('LC'), also known as a documentary credit is a payment mechanism used specially in international trade. In an LC, buyer's bank undertakes to make payment to seller on production of documents stipulated in the document of LC. LC play an important role in the trade of a country, especially in its international trade. In most of the cases, the exporters (sellers) are personally not acquainted with the importers (buyers) in foreign countries. In such cases the exporters bear great risk, if they draw bills on importers, after having dispatched the goods as per their orders, because if the latter default in accepting the bills or making the payment, the exporter will suffer heavy losses. To avoid such risks, the exporters ask the importers to arrange a letter of credit from their banker in favour of themselves, on the basis of which goods may be exported to the foreign importers.

Parties to Letter of Credit (LC)

There are following four main parties to LC transaction:

1. **Applicant Bank**: Applicant or he is also called as Opener of LC. The bank opens LC on behalf of the applicant customer who is buyer / importer of goods.
2. **Issuing Bank:** Issuing bank is a bank which opens LC and undertakes to make payment to the beneficiary (seller/ exporter) on submission of document as per the terms of LC.
3. **Beneficiary:** Beneficiary is the seller / exporter of goods in whose favour LC is opened.
4. **Advising Bank:** Advising Bank is the bank through whom LC is advised to the beneficiary. Normally it is located in seller's location / country.

In addition to above four parties, following parties may also be involved in LC transaction.

A. **Confirming Bank:** The bank which in addition to LC issuing bank, undertakes the responsibility of payment under LC. This is required since the LC issuing bank may not be known to the exporter and he therefore needs reputed bank from his country to add confirmation to the LC.

B. **Negotiating Bank:** The Bank that negotiates the documents under LC.

C. **Paying Bank:** Paying Bank or Nominated Bank is the bank nominated or authorized by the LC issuing bank to make payment under LC. In practice, the paying bank presents the documents received by it either to issuing bank or Reimbursing Bank for payment and transfers the proceeds to the beneficiary's account.

D. **Reimbursing Bank:** Bank with whom the LC issuing bank maintains foreign currency account (NOSTRO account). LC issuing bank authorizes the reimbursing bank to honor the LC reimbursement claim of negotiating bank.

Documents under LC

To receive payment, an exporter must present the documents required by LC. Typical types of documents in such contract include –

- **Financial documents:** Bill of Exchange, co –accepted draft. It is the basic document drawn by the beneficiary (exporter / seller) and has to be drawn as per the terms of the LC.
- **Commercial documents:** Invoice, packing list. It is addressed to the buyer (importer), signed by the seller (exporter) and contains details of sales like quantity, rate, specification and total amount.
- **Shipping documents:** Bill of lading, airway bill, lorry/truck receipt, railway receipt etc. It is a document of title to the goods, proof that the exporter has dispatched the goods.
- **Official documents:** License, certificate of origin, inspection certificate, health certificate. These are the documents as specified in the LC document.
- **Insurance documents:** Insurance policy or certificate but not a cover note. The dispatched goods must be insured for the amount and the kind of risks as specified in LC document. The policy / certificate should be signed by the insurance company.

Types of Letter of Credits

1. **Documentary LC and Clean LC:** When the LC contains a clause that the payment is conditional on submission of document of title to goods such as bill of lading (evidence of dispatch of good), it is called Documentary LC. If no such clause is in the LC, it is called a clean LC.

2. **Fixed Credit and Revolving Credit:** Fixed credit is where LC specifies the amount up to which one or more bills can be drawn by the beneficiary within the specified time. The LC remains effective till the specified amount is exhausted within specified time.

   In Revolving Credit, the LC opening bank does not specify the total amount up to which bills may be drawn, but mentions total amount up to which the bills may remain outstanding at a time. Thus after reaching that amount, as soon as the importer pays the bill, to that extent the limit gets reinstated. It is thus automatic and does not need renewal within the specified period of time.

3. **Revocable and Irrevocable LC**: In case of revocable LC, the opening bank reserves the right to cancel or modify the credit at any moment without prior notice to beneficiary.

   Irrevocable credit constitutes a definite undertaking of the issuing bank. Such a LC once established and advised cannot be cancelled or amended except with the consent of interested parties – beneficiary and negotiating bank.

4. **Confirmed and Unconfirmed LCs:** When the opening bank requests the advising bank in the exporter's country to add its confirmation to an irrevocable LC and the advising bank does so, the LC is "irrevocable and confirmed". The advising bank is then called as 'confirming bank' and its liability then becomes similar to the issuing bank. The confirmation cannot be cancelled or amended unless agreed by all the parties. A confirmed irrevocable LC provides absolute security to the beneficiary.

   If the advising bank does not add its confirmation, the LC remains as unconfirmed. In such case there will be no such obligation on the advising bank.

5. **'With' and 'Without Recourse' Credit:** In case of "with Recourse" bills, the banker as a holder of the bill, can recover the amount of the bill from the drawer, in case the drawee of the bill fails to pay it. In order to avoid such liability, the seller / exporter / drawer asks the importer / buyer to arrange credit "Without Recourse" to the drawer. In such a credit the issuing bank will have no recourse to the drawer (exporter) if the drawee (importer) fails to honour the bill. The liability of such a bill ends as soon as the bill is negotiated.

6. **Transferable LCs:** Ordinarily the beneficiary is authorized to draw bills of exchange under LC. But if the beneficiary is an intermediary in the transaction and the goods are actually to be supplied by someone else, the beneficiary may request the opener to arrange a transferable credit.

7. **Back to Back LC**: When a beneficiary receives a non-transferable LC, he may request a bank to open a new LC in favour of some other person (may be local supplier), on the security of LC issued in his favour. Such LC is called Back to Back LC. The terms of such LC are identical except that the amount (price) may be lower and the validity earlier.

8. **LC with Red Clause / Green Clause:** LC with a clause printed in red ink, contains authority from the issuing bank to the advising / negotiating bank to grant advances (packing credit) to the beneficiary up to a specified amount at the responsibility of former. It is a short term advance recovered from the amount, payable by the negotiating bank to the beneficiary when it negotiates the documents under LC submitted by the beneficiary.

   Green Clause is an extension of red clause LC allowing advances for storage of goods in warehouse in addition to packing credit.

9. **Instalment Credit:** LC is issued for full value of goods but part-shipments of specific quantities of goods within nominated period are required. Credit is not available for missed shipment and shipments thereafter unless permitted in LC document.

Advantages of LCs to the Exporter (seller) and the Importer (buyer)

- Facilitates trade transactions between two parties who are not known to each other and located in two different countries.
- Beneficiary is assured of payment as long as it complies with the terms and conditions of LC.
- The credit risk is borne by the issuing bank and not the applicant (buyer).
- LC accelerates payment of receivables and helps beneficiary (seller) in minimizing collection time.
- The beneficiary's foreign exchange risk is eliminated with LC issued in the currency of seller's country.
- On the basis of LC the exporter may obtain advance from the bank for procuring and processing or manufacturing goods to be exported.

- Buyer is enabled to import goods.
- LC assures importer that bills drawn under LC will be honoured only when they are strictly in accordance with the conditions stipulated in LC document and the documents are duly submitted.

[1]Specimen format of Letter of Credit and form of demand

Dated: ________________________

To: ______________________ (Name of Beneficiary)

_____________________________ (Address)

Irrevocable Revolving Standby Letter of Credit no. ___________________________

At the request of _________________________________(Name & Address of Applicant) ("Applicant"), we, __________________, (Name and address of issuing Bank) ("Issuing Bank") issue this irrevocable, revolving, standby Letter of Credit ("Letter of Credit") in favour of ___________________________________(Name and Address of Beneficiary) (the "Beneficiary") for _______________ (the "Face Value") (and such additional value as provided herein) covering amounts owed to the Beneficiary under the Agreement or for which the Beneficiary otherwise has the rights under this Letter of Credit to draw down amounts, all on the following terms and conditions:

1. **Definition in this Letter of Credit:**

   "Advising Bank" means the bank whose details are provided by Beneficiary at the time of opening of this Letter of Credit, or any other bank as notified by Beneficiary from time to time, in each case, for the purpose of advising this Letter of Credit to Beneficiary.

   "Agreement" means the agreement titled __________________ dated __________________, executed between the Beneficiary (including its successors and permitted assigns), and the Applicant (including its successors and permitted assigns).

   "Banking Day" means a day on which commercial banks are open for general commercial business in the city of Delhi, India.

   "Demand" means a demand for a payment under this Letter of Credit in the form of the Schedule to this Letter of Credit duly supported by the documents prescribed under Clause 5.2 of this Letter of Credit.

   "Expiry Date" means the date calculated in accordance with Clause 3.a (iii) of this Letter of Credit.

   "Trading Currency" means INR.

   "INR" means Indian Rupees.

2. **Terms and Conditions:**

   (a) The Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that this Letter of Credit shall cover a Face Value.

   (b) This Letter of Credit (L/C) shall also cover requests against partial payment and/or multiple drawings.

   (c) Subject to the terms of this Letter of Credit, the Beneficiary may request partial and/or multiple drawings under this Letter of Credit by submitting a Demand to the Issuing Bank at its counters in Delhi in relation to each such drawing.

   (d) Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, on the day of receipt by it of a Demand, it will honour the claim without demur and pay to the Beneficiary the amount requested in that Demand.

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[1] *https://www.igxindia.com/wp-content/uploads/2020/09/Letter-of-Credit-Format-20200922.pdf*

(e) The Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, following any payment pursuant to a Demand, it shall automatically and immediately thereafter reinstate the value of this Letter of Credit by the amount paid in order to restore this Letter of Credit to the Face Value. The Issuing Bank shall notify the Beneficiary immediately after any reinstatement of this Letter of Credit to the Face Value.

(f) This Standby Irrevocable Revolving Letter of Credit (L/C) is available for negotiation directly with the issuing Bank/Branch or through Beneficiary's Banker without recourse to the Applicant.

(g) The issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that if the payment pursuant to any demand is not made at sight, interest @ _________(Name of Issuing Bank) Base Rate+6.25% p.a. would be payable from the date of such demand till the date of actual payment.

(h) This Letter of Credit shall not be discharged by any change in the Issuing Bank's constitution, constitution of Beneficiary or that of the Applicant or change in applicable Indian laws.

(i) Opening, renewal, reinstatement, amendment, negotiation, and any other charges, if any, related to this Letter of Credit levied by the Issuing Bank shall be paid by the Applicant. Failure of the Applicant to make such payments shall not affect the Issuing Bank's obligations under this Letter of Credit and the Beneficiary shall be paid the money due to it under this Letter of Credit without any deduction.

(j) The Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary that, if at least ___________ (decided period) days prior to expiry of this Letter of Credit, Applicant fails to replace or renew such Letter of Credit with another letter of credit then, Beneficiary shall be entitled to draw down the full value of this Letter of Credit as security for payment of amounts payable by the Applicant.

(k) The Issuing Bank shall allow Beneficiary to assign this Letter of Credit for the benefit of Beneficiary's lenders or Beneficiary's successors and permitted assigns.

(l) The Issuing Bank undertakes not to amend any of the terms and conditions of this letter of credit (L/C) without prior consent of Beneficiary during the validity of this Letter of Credit (L/C).

(m) The issuing Bank certifies that the officer signing this L/C is authorised for this purpose and shall remain binding upon the issuing bank.

(n) The Issuing Bank shall forward and submit this Letter of Credit to the Advising Bank for advising of this Letter of Credit to Beneficiary.

(o) All bank charges including negotiation, handling, amendment, renewal, interest charges and any other charges shall be borne by the opener of Letter of Credit (L/C) i.e. by the Applicant.

(p) Payment against this Letter of Credit (L/C) shall be made to the beneficiary immediately on presentation of a copy of any of the documents such as Invoices/Provisional invoices/Debit notes/ Statement of claim / Demand Letter/ Claim letter etc. at any time within the validity period of the Letter of Credit (L/C).

3. Term, Extension and Expiry:

(a) Terms:

(i) This Letter of Credit is issued on the date above with an initial term of __________ (mention the term) calendar months.

(ii) The Issuing Bank shall renew this Letter of Credit no later than ______ days before the expiry of this Letter of Credit for a further period of __________ calendar months or in the event of no further extension of the Agreement, for a further period of _____ days from the End Date.

(iii) This Letter of Credit shall terminate on the date notified by the Beneficiary in writing to the Issuing Bank, giving not less than _______ Banking Days' notice of such termination.

(**b**) **Expiry:**

(i) Without prejudice to Clause 3.b (ii) of this Letter of Credit, the Issuing Bank will be released from its obligations under this Letter of Credit at the close of business on the Expiry Date as per Clause 3.a (iii) of this Letter of Credit.

(ii) On expiry of this Letter of Credit the obligations of the Issuing Bank under this Letter of Credit will cease with no further liability on the part of the Issuing Bank except for any Demand validly presented under this Letter of Credit that remains unpaid. If a Demand has been received by the Issuing Bank not later than the Expiry Date, the Issuing Bank's obligation to pay hereunder shall be deemed accrued notwithstanding that the due date for payment may fall after the Expiry Date.

(iii) When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiary shall return the original of this Letter of Credit to the Issuing Bank.

4. Payments:

(a) All payments denominated in US$ under this Letter of Credit shall be paid in INR by converting the amount due at the Exchange Rate or in US$ on request of the Beneficiary**.**

(b) All payments under this Letter of Credit shall be made for full value in immediately available funds (without any set-off, withholding or deduction) and shall be made on the day of receipt of a Demand to the account of the Beneficiary as set out in the Demand through RTGS or Telegraphic Transfer.

5. Delivery of Demand and Supporting Documents:

(a) Delivery:

(i) Each Demand must be in writing, and may be given in person, by post, fax or by electronic communication and must be received by the Issuing Bank at its address as follows:

________________________________ (Insert Details)

(ii) For the purposes of this Letter of Credit, electronic communication with electronic signature shall be treated as a communication that has been validly given in writing.

(b) Supporting Documents:

Each Demand shall be duly supported by a copy of invoice and / or debit notes under the Agreement against which the payment is claimed.

6. Governing Law

This Letter of Credit shall be governed by and construed in accordance with the laws of India.

7. Jurisdiction

The courts and tribunals at _________________(Name of State) shall have exclusive jurisdiction over the subject matter of this Letter of Credit.

Yours faithfully [Issuing Bank] By:

(*Note*: The terms, conditions, details and coverage of Letter of Credit should be prepared with diligently considering all the requirements and may differ on case to case basis.)

***

FORM OF DEMAND

Date: ___________________________

To: ___________________ [Bank]

Subject: Irrevocable, Revolving, Standby Letter of Credit No. ___________ issued in favour of __________________ ("Letter of Credit")

Sir/Madam

We refer to the above-mentioned Letter of Credit. Terms defined in the Letter of Credit have the same meaning when used in this Demand.

1. We certify that the sum of Rs. ______________ is due under the Agreement as of _______________ (Date) against invoice no _______ dated _________ and/or debit note no ______ dated _____________ We therefore demand payment of the sum of Rs ___________ plus interest as provided in the Letter of Credit.

   Alternatives:

   The face value of this Letter of credit (L/C) shall be equal to ______________(Rupees ________________________)
   The aggregate liability under this Letter of Credit (L/C) is restricted to Rs.____________________

   (Rupees____________________).

2. All documents prescribed under Clause 5.2 of the Letter of Credit are enclosed herewith.
3. Payment should be made to the following account:

   Name:

   Account Number:

   Bank:

4. The date of this Demand is not later than the Expiry Date.

Yours faithfully (Authorised Signatory)

For ______________________________[BENEFICIARY].

***

Bank Guarantee

It is a non-fund-based facility required by the borrowers. Banks are often required to issue guarantees on behalf of their customers. A bank guarantee ensures that the liabilities of the debtor will be met in the event he fails to fulfil his contractual obligations. It is an agreement between three parties – the bank, the beneficiary and the applicant who seeks the guarantee from the bank. This agreement acts as an undertaking assuring the beneficiary that the bank would pay the specified amount, in the case of applicant's default in delivering the "financial" or "performance" obligation as mentioned in the guarantee.

Types of Bank Guarantees

1. **Financial Guarantee:** Under this, bank guarantees that the applicant will meet the financial obligation and in case he fails, the bank as a guarantor is bound to pay (e.g. guarantees towards revenue dues, taxes, duties and for disputed liabilities for litigations pending at courts; credit enhancement; repayment of financial securities etc.).
2. **Performance Guarantee:** Under this, guarantee issued is for honouring a particular task and completion of the same in the prescribed / agreed upon manner as stated in the guarantee document. (e.g. bid bonds, retention money guarantee etc,)

Specimen format of Bank Guarantee

Bank Guarantee No. & date ___________________

Amount of Guarantee Rs. ___________________

To

____

____

____

(Name & Address of the Authority
to which Bank Guarantee is to addressed)

Dear Sir,

THIS DEED OF GUARANTEE made this ____day of March, 2023 between ________________ (hereinafter called "the Bank") of the one part, and ________ (Purchasing entity) of the other part.

WHEREAS in consideration of the _____________________ (Hereinafter referred to as the 'Purchaser' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to _____________________ (Name of Vendor) with its Registered/Head Office at ___________________________________ (Hereinafter referred to as the 'Contractor' which expression shall unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), a Contract by issue of Purchase Order No________ dated _______ and the same having been acknowledged by the contractor, for_______(Contract sum in figures and words for____________________] and the Contractor having agreed to provide a Contract Performance Guarantee for the faithful performance of the entire Contract equivalent to _____ percent of the said basic value of the aforesaid work under the Purchase Order.

AND WHEREAS in consideration of the aforesaid and at the request of______ (Purchaser) We, ________ (Bank's Name) (hereinafter referred as "the Bank") having its registered office at ______________ (full address with pin code) do hereby unconditionally undertake to pay the amount payable under this guarantee without any demur, merely on a demand from the ________________(Purchaser) on demand on breach of the contract. Any such demand in writing made on the Bank by ________(purchaser) shall be conclusive as regards the amount due and payable by the Bank under the guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. ________ secured by this guarantee.

We, the Bank further agree that the guarantee herein contained shall remain in full force and in effect during till the work order gets completely executed. Unless demand for claim under this guarantee is made on us in writing on or before ________ (mention the decided date), we shall be discharged from all liabilities under this guarantee thereafter.

We, the Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of the _______(Purchser) in writing.

We, the Bank also agree that this guarantee will not be discharged due to change in the constitution of the Bank or ______ (name of the purchasing entity).

Notwithstanding anything contained herein:

(i) Our liability under this Bank Guarantee shall not exceed Rs. _______(Rupees _____________ only).

(ii) This Bank Guarantee shall be valid up to _______ (mention decided date) and shall, at the request of the ________ (name of purchasing entity) be extended from time to time and kept valid during the completion of work order.

(iii) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before _______________ (mention the decided date).

In witness whereof the Bank, through its authorised officer has set its hand and stamp on this _____ day of March, 2023 at _____________________.

Signature :

Name:

Designation with Bank Stamp:

Official Address:

Witness

1. Signature :

   Name:

   Witness

2. Signature:

   Name :

(*Note*: The terms, conditions, details and coverage of Bank Guarantee should be prepared with diligently considering all the requirements and may differ on case to case basis.)

BYE LAWS

According to Collins' Dictionary, A bye law is a law which is made by a local authority and which applies only in their area. So, certain organisations frame their Bye Laws for effective functioning. Bye-Laws are legal tools used to regulate a particular subject or area so as to achieve orderly development of that subject. The nature of the Bye-Laws i.e. Mandatory or directory depends upon the subject matter for which they were made and the language used by the draftsmen in drafting the legislature empowering the making of Bye Laws. The authority to frame the bye laws are generally provided by the legislative enactment that is mandatory for that organisation to comply.

The legal recognition of Bye Laws are as under:

According to Article 13(3)(a) of the Constitution of India, "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

According to section 3(29) of General Clauses Act, 1897, "Indian law" shall mean any Act, Ordinance, Regulation, rule, order, bye-law or other instrument which before the commencement of the Constitution, had the force of law in any Province of India or part thereof, or thereafter has the force of law in any Part A State or Part C State or Part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act;

So, a Bye Law is also a Law recognized by the Constitution of India and also under various statutes.

When a Bye Law should be made

Section 22 of General Clauses Act, 1897 provides that where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, of with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

Examples of Bye Laws

- New Delhi Municipal Council Solid Waste Management Bye-Laws, 2017
- Bye Laws of National Stock Exchange of India Limited
- Bye Laws of Bombay Stock Exchange
- Bye-laws of a Multi State Cooperative Society
- Bye- laws of ICSI Institute of Insolvency Professionals
- ICSI registered Valuers Organisation Bye Laws
- Bye Laws made by various bodies for Arbitration Proceedings

Specimen of Bye Laws of Society

BYE – LAWS OF

____

I. GENERAL

(1) The name is ________________________ (hereinafter refer to as Society).

(2) The Society is registered under Delhi Cooperative Societies Act, 2003 office situated at ________ ___________________________________.

(3) These bye-laws may not be amended, except in accordance with the approval of competent authority.

II. DEFINITIONS

4. (1) In these bye-laws, unless the context otherwise requires –

(a) "authorisation for assignment" means an authorisation to undertake an assignment

(b) "certificate of membership" means the certificate of membership of the Agency granted under bye-law;'

(c) "Electronic mode" means through video conferencing or other audio visual means and such other means as may be recognised under the Information Technology Act, 2000 including amendment thereof;

(d) "Governing Board" means the Board of the Society;

(e) "relative" shall have the same meaning as assigned to it in Income-tax Act, 1961.

(2) Unless the context otherwise requires, words and expressions used and not defined in these bye-laws shall have the meanings assigned to them in Delhi Cooperative Societies Act, 2003.

III. OBJECTIVES

5. (1) To produce and provide safe and Healthy food.

(2) To develop the ecosystem that help to identify the adultered Food.

(3) The Society shall carry on the functions as may be decided by the Board for the purpose of point no. 1 and 2.

(4) The Society shall not carry on any function other than those specified, or which is inconsistent with the discharge of its functions.

IV. DUTIES OF THE SOCIETY

6. (1) The society shall maintain high ethical and professional standards in the regulation of its members.

(2) The society shall:

(a) ensure compliance with the statutory enactments;

(b) employ fair, reasonable, just, and non-discriminatory practices for the enrolment and regulation' of its members;

(c) be accountable to the Board in relation to all bye-laws and directions issued to its members.

V. COMMITTEES OF THE SOCIETY

7. (1) The Board may form an Advisory Committee of members of the society to advise it on any matters pertaining to achievement of its objective.

(2) The Board shall form a Finance Committee consists of at least 10 members of the Society.

(3) The Board shall form a Disciplinary Committee consists of at least 10 members of the Society.

(4) The Committees may meet at such places and times as the Board may provide.

VII. Eligibility for Enrolment

8. An individual may be enrolled as a member on payment of Enrollment Fees of Rs. 10,000/-.

VIII. Membership Fee.

9. The society may require the members to pay a fixed sum of money as its annual membership fee.

X. DISCIPLINARY PROCEEDINGS

10. The Disciplinary committee may initiate disciplinary proceedings by issuing a show-cause notice against members

(a) based on a reference made by the Board;

(b) following the directions given by the Board or any court of law; or

(c) *suo moto*, based on any information received by it.

XI. Surrender of Membership

11. (1) A member who wishes to surrender his membership of the society may do so by submitting an application for surrender of his membership.

(2) Upon acceptance of such surrender of his membership, and completion of thirty days from the date of such acceptance, the name of the member shall be struck from the registers of the society, and the same shall be intimated to the Board.

XII. Expulsion from Membership

12. (1) A member shall be expelled by the society -

(a) on an expiry of thirty days from the order of the Disciplinary Committee, unless set aside or stayed by the competent court;

(b) upon non-payment of membership fee despite at least two notices served in writing;

(c) upon the cancellation of his membership by the Board;

(d) upon the order of any court of law.

SHOW CAUSE NOTICE (SCN)

A show cause notice is a document delivered to other party to represent the matter. It summaries the alleged matter and grants the other party an occasion to explain themselves. SCN may be issued for varied reasons by various authorities such as by Courts, Government, Quasi-judicial Authorities, Employers, other authorities etc. The issuance of SCN is preferred by authorities due to the observance of the principle of Natural Justice. It is based on the principle *audi alteram partem* (hear the other side) i.e. no one should be condemned unheard. It requires that both sides should be heard before passing the order. This rule implies that a person against whom an order to his prejudice is passed should be given information as to the charges against him and should be given opportunity to submit his explanation thereto. SCN provides an opportunity to the receiver to counter a potentially harming claim. SCN may be in any form depending upon the requirement for calling of the information and explanations.

Essentials of Show Cause

A show cause notice should *inter alia* address the following essentials:

1. SCN should contain the name of the issuer.
2. It should be issued in writing.
3. It should be written in clear language in order to avoid ambiguity.
4. It should mention the correct and brief facts.
5. If there is a violation of Law, it should be specifically mentioned.
6. Charges should be levelled specifically and they should be vague or in contradiction with the information contained in SCN.
7. Proposed action should also be mentioned in the SCN. For eg. Penalty, Legal action, Suspension etc.
8. The time limits that have been provided to the receiver should be mentioned in the notice.
9. Adequate time limit should be given for the reply, unless otherwise specifically provided by any law.

9. References and Annexures should be provided, wherever required.
10. The mode of representation warranted should be mentioned in SCN i.e. In person, Meeting (Online or face to face).
11. The address of the authority should be mentioned in SCN.
12. SCN should be dated.

Specimen Show Cause Notice

GOVERNMENT OF INDIA

MINISTRY OF ____________

Tel: ___________________ Address:_________________

Fax: ____________________

Email: ___________________

No. _________________ Dated: __________________

To :

M/s ____________________,

Address__________________

Subject: Violation of provisions of ________________________

Sir,

During the inspection of your registered office of your company on 21.02.2023 by the undersigned, violation of provisions of Rule _____ of ____________(Rules), was observed. The details of violations are as under:

1. ____________________________
2. ___________________________
3. ____________________________

In this connection, it is brought to your notice that, the above violation of said rule constitutes an offence punishable under __________________ (Rules).

You are, therefore, show cause within a period of 30 (thirty) days from the date of issue of this notice.

Please note that no further notice will be given to you in this regard.

Yours truly,

__________________ (Name)

____________ (Designation)

STANDING ORDERS

'Standing Orders' defines the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc., go a long way towards minimising friction between the management and workers in industrial undertakings. The Industrial Employment (Standing Orders) Act(said Act) requires employers in industrial establishments to clearly define the conditions of employment by issuing standing orders duly certified. It applies to every industrial establishment wherein 100 or more workmen are employed or were employed on any day during the preceding twelve months.

Model standing orders issued under the Act deal with classification of workmen, holidays, shifts, payment of wages, leaves, termination etc. The text of the Standing Orders as finally certified under the said act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

The objects of standing orders is that the employer, once having made the conditions of employment known to his employed workmen cannot change them to their detriment or to the prejudice of their rights and interests. The express or written conditions of employment, it is open for the prospective worker to accept them and join the industrial establishment.

Important aspects for issuing Standing Orders

1. The employer of the establishment submits to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in that establishment.
2. Such draft Standing Orders shall be in conformity with the Model Standing Orders if any, and, shall contain every matter set out in the Schedule which may be applicable to the industrial establishment.
3. The draft Standing Orders shall be accompanied by a statement containing prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.
4. It is the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of the Standing Orders.
5. On receipt of the draft Standing Order from the employer, the Certifying Officer shall forward a copy thereof to the trade union of the workmen or where there is no trade union, then to the workmen in such manner as may be prescribed, together with a notice requiring objections, if any, which the workmen may desire to make in the draft Standing Orders. These objections are required to be submitted to him within 15 days from the receipt of the notice. On receipt of such objections he shall provide an opportunity of being heard to the workmen or the employer and will make amendments, if any, required to be made therein and this will render the draft Standing Orders certifiable under the Act and he will certify the same. A copy of the certified Standing Orders will be sent by him to both the employer and the employees association within seven days of the certification.
6. Certifying Officer files a copy of all the Standing Orders as certified by him in a register maintained for the purpose in the prescribed form. He shall furnish a copy of the same to any person applying therefor on payment of the prescribed fee.
7. Standing Orders comes into operation on the expiry of 30 days from the date on which the authenticated copies are sent to employer and workers representatives or where an appeal has been preferred, they will become effective on the expiry of 7 days from the date on which copies of the order of the appellate authority are sent to employer and workers representatives.
8. The text of the Standing Orders as finally certified under the said Act shall be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed.

Matters to be provided in standing order

1. Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant, leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and re-opening of sections of the industrial establishment, and temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed under the Industrial Employment (Standing Orders) Act, 1946.

Model Standing Order

Model Standing Orders on additional items applicable to all industries

(1) SERVICE RECORD

Matters relating to service card, token tickets, certification of service, change of residential address of workers and record of age.

(i) *Service Card.*- Every industrial establishment shall maintain a service card in respect of each workman in the form appended to these orders, wherein particulars of that workman shall be recorded with the knowledge of that workman and duly attested by an officer authorised in this behalf together with date.

(ii) *Certification of service.*-

(a) Every workman shall be entitled to a service certificate, pacifying the nature of work (designation) and the period of employment (indicating the days, months, years), at the time of discharge, termination, retirement or resignation from service;

(b) The existing entries in para 16 of Schedule I and para 20 of Schedule I-A shall be omitted.

(iii) *Residential address of workman.*- A workman shall notify the employer immediately on engagement the details of his residential address and thereafter promptly communicate to his employer any change of his residential address. In case the workman has not communicated to his employer the change in his residential address, his last known address shall be treated by the employer as his residential address for sending any communication.

(iv) *Record of age.*-

(a) Every workman shall indicate his exact date of birth to the employer or the officer authorised by him in this behalf, at the time of entering service of the establishment. The employer of the officer authorised by him in this behalf may before the date of birth of a workman is entered in his, service card, require him to supply :-

(i) his matriculation or school leaving certificate granted by the Board of Secondary Education or similar educational authority ; or

(ii) a certified copy of his date of birth as recorded in the registers of a municipality, local authority or Panchayat or Registrar of Births;

(iii) in the absence of either of the aforesaid two categories of certificate, the employer or the officer authorised by him in this behalf may require the workman to supply, a certificate from a Government Medical Officer not below the rank of an Assistant Surgeon indicating the probable age of the workman provided the cost of obtaining such certificate is borne by the employer;

(iv) where it is not practicable to obtain a certificate from a Government Medical Officer, an affidavit sworn, either by the workman or his parents, or by a near relative, who is in a position to know about the workman's actual or approximate date of birth, before a first Class Magistrate or Oath Commissioner, as evidence in support of the date of birth given by him.

(b) The date of birth of a workman, once entered in the service card of the establishment shall be the sole evidence of his age in relation to all matters pertaining to his service including fixation of the date of his retirement from the service of the establishment. All formalities regarding recording of the date of birth shall be finalised within three months of the appointment of a workman.

(c) Cases where date of birth of any workman had already been decided on the date these rules come into force shall not be reopened under these provisions.

Note. - Where exact date of birth is not available and the year of birth is only established then the 1st July of the said year shall be taken as the date of birth.

(2) CONFIRMATION

The employer shall in accordance with the terms and conditions stipulated in the letter of appointment, confirm the eligible workman and issue a letter of confirmation to him. Whenever a workman is confirmed, an entry with regard to the confirmation shall also be made in his service card within a period of thirty days from the date of such confirmation.

(3) AGE OF RETIREMENT

The age of retirement or superannuation of a workman shall be as may be agreed upon between the employer and the workman under an agreement or as specified in a settlement or award which is binding on both the workman and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of [58]24 years of age by the workman.

(4) TRANSFER

A workman may be transferred according to exigencies of work from one shop or department to another or from one station to another or from one establishment to another under the same employer:

Provided that the wages, grade, continuity of service and other conditions of service of the workman are not adversely affected by such transfer:

Provided further that a workman is transferred from one job to another, which he is capable of doing, and provided also that where the transfer involves moving from one State to another such transfer shall take place, either with the consent of the workman or where there is a specific provision to that effect in the letter of appointment, and provided also that (i) reasonable notice is given to such workman, and (ii) reasonable joining time is allowed in case of transfers from one station to another. The workman concerned shall be paid traveling allowance including the transport charges, and fifty per cent thereof to meet incidental charges.

(5) MEDICAL AID IN CASE OF ACCIDENTS

Where a workman meets with an accident in the course of or arising out of his employment, the employer shall, at the employer's expense, make satisfactory arrangements for immediate and necessary medical aid to the injured workman and shall arrange for his further treatment, if considered necessary by the doctor attending on him. Wherever the workman is entitled for treatment and benefits under the Employee's State Insurance Act, 1948 or the Workman's Compensation Act, 1923, the employer shall arrange for the treatment and compensation accordingly.

(6) MEDICAL EXAMINATION

Wherever the recruitment rules specify medical examination of a workman on, his first appointment, the employer, shall, at the employer's expense make arrangements for the medical examination by a registered medical practitioner.

(7) SECRECY

No workman shall take any papers, books, drawings, photographs, instruments, apparatus, documents or any other property of an industrial establishment out of the work premises except with the written permission of his immediate superior, nor shall he in any way pass or cause to be passed or disclose or cause to be disclosed any information or matter concerning the manufacturing process, trade secrets and confidential documents of the establishment to any unautthorised person, company or corporation without the written permission of the employer.

(8) EXCLUSIVE SERVICE

A workman shall not at any time work against the interest of the industrial establishment in which he is employed and shall not take any employment in addition to his job in the establishment, which may adversely affect the interest of his employer

BONDS

Bond means a formal document by which a person undertakes to perform a certain act. The bonds are of different types such as Surety Bond, bonds as financial instruments, judicial bonds, Guarantee bonds, saving bonds etc. The purpose of issuance of bonds also differs according to the requirements. For example: Surety Bonds are undertaken for the purpose of providing security if a certain act agreed has not been done. Financial Instruments bonds are evidence of a debt due on the organisation. A ***bail bond*** is an undertaking by an accused to appear for trial or to pay a sum of money stated therein on non-compliance. A bond is also included in the wide campass of the term deed. The purpose of undertaking a bond is secure the act or omission for which the bond is issued as a security.

Specimen Bond and Bail-bond

BOND AND BAIL BOND FOR ATTENDANCE BEFORE COURT

I,____________________(name), of_______________(place), having been arrested or detained without warrant by the Officer in charge of police station (or having been brought before the Court of ____________________), charged with the offence of ______________, and required to give security for my attendance before such Officer of Court on condition that I shall attend such Officer or Court on every day on which any investigation or trial is held with regard to such charge, and in case of my making default herein, I bind myself to forfeit to Government the sum of rupees.

Dated, this day ____ of _______, 2023 .

(Signature)

LESSON ROUND-UP

- A document is one or more official pieces of paper with writing on them. The term 'document' is so imperative and broad that many legislations have defined it differently befitting the intent of legislature behind the enactment of that statute.
- In legal sense, a deed is a solemn document. Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability.
- A business has to enter into various types of agreements with different parties and have to execute various types of documents in favour of its clients, banks, financial institutions, employees and other constituents.
- An agreement gives birth to a contract. As per Section 2(e) of the Indian Contract Act, 1872 "every promise and every set of promises, forming the consideration for each other, is an agreement. It is apparent from the definition that an agreement is based on a promise.
- Circulars are issued by varied range of individuals and authorities. For example, A company may issue a circular to its employees for dissemination of a policy approved by the Board of Directors to be complied by the employees.
- Public notices are issued to convey information to large number of receivers that may called public. These are announcements made on a happening of a certain event of public interest.
- Letter of Credit ('LC'), also known as a documentary credit is a payment mechanism used specially in international trade. In an LC, buyer's bank undertakes to make payment to seller on production of documents stipulated in the document of LC.
- It is a non-fund-based facility required by the borrowers. Banks are often required to issue guarantees on behalf of their customers. A bank guarantee ensures that the liabilities of the debtor will be met in the event he fails to fulfil his contractual obligations.
- According to Collins' Dictionary, A bye law is a law which is made by a local authority and which applies only in their area. So, certain organisations frame their Bye Laws for effective functioning.
- A show cause notice is a document delivered to other party to represent the matter. It summaries the alleged matter and grants the other party an occasion to explain themselves.
- 'Standing Orders' defines the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc., go a long way towards minimising friction between the management and workers in industrial undertakings.
- Bond means a formal document by which a person undertakes to perform a certain act. The bonds are of different types such as Surety Bond, bonds as financial instruments, judicial bonds, Guarantee bonds, saving bonds etc.

GLOSSARY

Deed: Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability.

Circulars: A circular is a letter or notice sent to a large number of people. The purpose of circulars is to disseminate the information to large number of individuals.

Tender: A written or formal offer to supply goods or do a job for an agreed price.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. The terms Agreements and Contracts may be used interchangeably but they are not necessarily same. Comment.
2. The managing director of your company intends to disseminate a new policy to the employees. Prepare a note informing the merits of issuance of circulars.
3. Distinguish between Letter of Credit and Performance Guarantee.
4. XYZ Limited intends to choose an organisation for awarding work orders from time to time for supply of telephone instruments. Explain the essential ingredients for preparing a tender document.
5. Draft a Public Notice of publishing extract of unaudited financial results XYZ Limited. Assume necessary facts.

LIST OF FURTHER READINGS

- Chartered Secretary, The ICSI
- Articles written by professionals

OTHER REFERENCES (Including Websites/Video Links)

https://www.icsi.edu/home/cs/

Lesson

2

General principles of Drafting

KEY CONCEPTS

■ Drafting ■ Conveyancing ■ Fowler's rules of Drafting ■ Components of Deeds ■ Indentures ■ Endorsements ■ Engrossing

Learning Objectives

To understand:

- The meaning of Drafting and Conveyancing
- Principles of drafting of Deeds and Conveyancing
- Important clauses of Deeds and Agreements
- Structure of Deeds and Agreements
- Usage of appropriate words in Drafting
- How to interpret Deeds
- Endorsements
- Stamping

Lesson Outline

- Introduction
- Drafting
- Conveyancing
- Drafting and Conveyancing: Distinguished
- Distinction between Conveyance and Contract
- General principles of Drafting all sorts of Deeds and Conveyancing
- Basic Components of Deeds
- Important terms and conditions in the Agreement
- Guidelines for use of particular words and phrases for Drafting and Conveyancing
- Use of appropriate Words and Expressions
- Aids to Clarity and Accuracy
- Endorsements
- Stamping of the Deeds
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites/video links)

REGULATORY FRAMEWORK

- Indian Stamp Act, 1899,
- Transfer of Property Act, 1882
- General Clauses Act, 1897
- Sale of Goods Act, 1930
- Companies Act, 2013
- Notaries Act, 1952
- Indian Evidence Act, 1872
- Negotiable Instrument Act, 1881
- Registration Act, 1908

INTRODUCTION

Importance of drafting and conveyancing for a company's executive could be well imagined as the company has to enter into various types of agreements with different parties and have to execute various types of documents in favour of its clients, banks, financial institutions, employees and other constituents.

The importance of the knowledge about drafting and conveyancing for the corporate executives has been felt particularly for the three reasons viz.:

(i) for obtaining legal consultations;

(ii) for carrying out documentation departmentally;

(iii) for interpretation of the documents.

With the knowledge of drafting and conveyancing, better interaction could be had by the corporate executives while seeking legal advice from the legal experts in regard to the matters to be incorporated in the documents, to decide upon the coverage and laying down rights and obligations of the parties therein. Knowledge in advance on the subject matter facilitates better communication, extraction of more information, arriving on workable solutions, and facilitates settlement of the draft documents, engrossment and execution thereof.

Knowledge of drafting and conveyancing for the corporate executives is also essential for doing documentation departmentally. An executive can make a better document with all facts known and judging the relevance and importance of all aspects to be covered therein.

A number of documents are required to be studied and interpreted by the corporate executives. In India, in the absence of any legislation on conveyancing, it becomes imperative to have knowledge about the important rules of law of interpretation so as to put right language in the documents, give appropriate meaning to the words and phrases used therein, and incorporate the will and intention of the parties to the documents.

DRAFTING

Drafting, in legal sense, means an act of preparing the legal documents like agreements, contracts, deeds etc.

Drafting may be defined as the synthesis of law and fact in a language form [Stanley Robinson: Drafting Its Application to Conveyancing and Commercial Documents (1980); (Butterworths); Chapter 1, p.3]. This is the essence of the process of drafting. In other words, legal drafting is the crystallization and expression in definitive form of a legal right, privilege, function, duty, or status. It is the development and preparation of legal instruments such as constitutions, statutes, regulations, ordinances, contracts, wills, conveyances, indentures, trusts and leases, etc.

The process of drafting operates in two planes: the conceptual and the verbal. Besides seeking the right words, the draftsman seeks the right concepts. Drafting, therefore, is first thinking and second composing.

A proper understanding of drafting cannot be realised unless the nexus between the law, the facts, and the language is fully understood and accepted. Drafting of legal documents requires, as a pre-requisite, the skills of a draftsman, the knowledge of facts and law so as to put facts in a systematised sequence to give a correct presentation of legal status, privileges, rights and duties of the parties, and obligations arising out of mutual understanding or prevalent customs or usages or social norms or business conventions, as the case may be, terms and conditions, breaches and remedies etc. in a self-contained and self-explanatory form without any patent or latent ambiguity or doubtful connotation. To collect, consolidate and co-ordinate the above facts in the form of a document, it requires serious thinking followed by prompt action to reduce the available information into writing with a legal meaning, open for judicial interpretation to derive the same sense and intentions of the parties with which and for which it has been prepared, adopted and signed.

Question: Good Drafting is required only for the purpose of preparing agreements and contracts.

Options: True/False

Answer: False, drafting is required in varied fields such as documentations for business, creating legal documents including agreements.

CONVEYANCING

Technically speaking, conveyancing is the art of drafting of deeds and documents whereby land or interest in land i.e. immovable property, is transferred by one person to another; but the drafting of commercial and other documents is also commonly understood to be included in the expression.

Mitra's legal and commercial dictionary defines "conveyance" as the action of conveyancing, a means or way of conveyancing, an instrument by which title to property is transferred, a means of transport, vehicle. In England, the word "conveyance" has been defined differently in different statutes. Section 205 of the Law of Property Act, 1925 of England provides that the "conveyance includes mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of any interest therein by any instrument except a will. "Conveyance", as defined in clause 10 of Section 2 of the Indian Stamp Act, 1899, "includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided by Schedule I of this Act." Section 5 of the Transfer of Property Act, 1882 (Indian) makes use of the word "conveyance" in the wider sense as referred to above.

Thus, conveyance is an act of conveyancing or transferring any property whether movable or immovable from one person to another permitted by customs, conventions and law within the legal structure of the country. As such, deed of transfer is a conveyance deed which could be for movable or immovable property and according to the Transfer of Property Act, 1882, transfer may be by sale, by lease, by giving gift, by exchange, by will or bequeathment. But acquisition of property by inheritance does not amount to transfer under the strict sense of legal meaning.

In India the forms of conveyancing are based on the present English Forms. It is to be taken note that no legislation in India has ever been passed on the law of conveyancing.

Question: What is conveyed in conveyancing?

Answer: Generally, Rights and interest is transferred by one person to another in the document prepared for conveyancing.

DRAFTING AND CONVEYANCING: DISTINGUISHED

Both the terms "drafting and conveyancing" provide the same meaning although these terms are not interchangeable. Conveyancing gives more stress on documentation much concerned with the transfer of property from one person to another, whereas "drafting" gives a general meaning synonymous to preparation of drafting of documents. Document may include documents relating to transfer of property as well as other "documents" in a sense as per definition given in Section 3(18) of the General Clauses Act, 1897 which include any matter written, expressed or described upon any substance by means of letters, figures or mark, which is intended to be used for the purpose of recording that matter. For example, for a banker the document would mean loan agreement, deed of mortgage, charge, pledge, guarantee, etc. For a businessman, 'document of title to goods' would mean something as defined under Section 2(4) of the Sale of Goods Act, 1930 so as to include "Bill of lading, dock-warrant, warehouse-keepers' certificate, wharfingers' certificate, railway receipt multi-model transport document warrant or order for the delivery of goods and any other document used in ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented." As per Section 2(36) of the Companies Act, 2013 the term "document" includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form. Thus, drafting may cover all types of documents in business usages.

In India, the commercial houses, banks and financial institutions have been using the term "documentation" in substitution of the words "drafting and conveyancing". Documentation refers to the activity which symbolises preparation of documents including finalisation and execution thereof.

DISTINCTION BETWEEN CONVEYANCE AND CONTRACT

Having understood the meaning of conveyance, it becomes necessary to understand the distinction between conveyance and contract before discussing basic requirements of conveyance or deed of transfer. Apparently, conveyance is not a contract. The distinction between conveyance and contract is quite clear. Contract remains to be performed and its specific performance may be sought but conveyance passes on the title to property to another person. Conveyance does not create any right of any action but at the same time it alters the ownership of existing right. There may be cases where the transaction may pertain both contract as well as conveyance. For example, lease, whereby obligation is created while possession of the property is transferred by lessor to lessee. More so, contracts are governed by provisions of the Indian Contract Act, 1872 whereas the cases of transfer of immovable property are governed by the Transfer of Property Act, 1882 in India. A mere contract to mortgage or sale would not amount to actual transfer of interest in the property but the deed of mortgage or sale would operate as conveyance of such interest. In other words, once the document transferring immovable property has been completed and registered as required by law, the transaction becomes conveyance. Any such transaction would be governed under the provisions of the Transfer of Property Act, 1882.

Question: Does drafting and conveyancing both intends to create documents?

Answer: In both drafting and conveyancing documents are purported to be created. However, the purpose of creation of document is different.

GENERAL PRINCIPLES OF DRAFTING ALL SORTS OF DEEDS AND CONVEYANCING

As discussed above, drafting of legal documents is a skilled job. A draftsman, in the first instance, must ascertain the names, description and addresses of the parties to the instrument. He must obtain particulars about all necessary matters which are required to form part of the instrument. He must also note down with provision any particular directions or stipulations which are to be kept in view and to be incorporated in the instrument. The duty of a draftsman is to express the intention of the parties clearly and concisely in technical language. With this end in view, he should first form a clear idea of what these intentions are.

When the draftsman has digested the facts, he should next consider as to whether those intentions can be given effect to without offending against any provision of law. He must, therefore, read the introductory note, or, if time permits, the literature on the subject of the instrument. A corporate executive, therefore, must note down the most important requirements of law which must be fulfilled while drafting complete instrument on the subject. Validity of document in the eye of law cannot be ignored and at the same time the facts which should be disclosed in the document cannot be suppressed. Nothing is to be omitted or admitted at random. Therefore, knowledge of law of the land in general and knowledge of the special enactments applicable in a particular situation is an essential requirement for a draftsman to ensure that the provisions of the applicable law are not violated or avoided. For example, in cases where a deed to be executed by a limited company, it is necessary to go into the question as to whether the company has got power or authority under its memorandum to enter into the transaction. A company can do only that much which it is authorised by its memorandum. Further, a company being a legal entity, must necessarily act through its authorised agents. A deed, therefore, should be executed by a person duly authorised by the directors by their resolution or by their power of attorney.

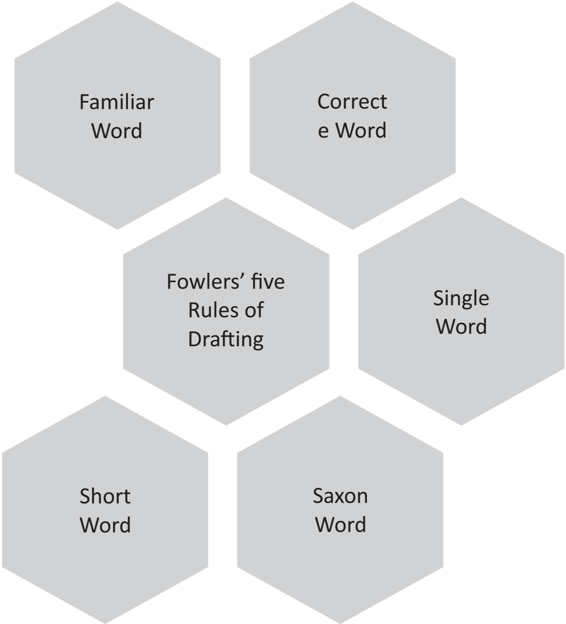
It is also to be ensured that the format of documents adopted adheres to the customs and conventions in vogue in the business community or in the ordinary course of legal transactions. For any change in the form of such document, use of juridical and technical language should invariably be followed. The statements of negatives should generally be avoided. The order of the draft should be strictly logical. Legal language should be, to the utmost possible extent, precise and accurate. The draft must be readily intelligible to laymen. All the time the draftsman must keep his eye on the rules of legal interpretation and the case-law on the meaning of particular words and choose his phraseology to fit them. [*Piesse and Giechrist Smith book on The Elements of Drafting, 2nd Ed. pp. 7-12*].

Document should be supported by the schedules, enclosures or annexures in case any reference to such material has been made in that.

Rules to be followed while drafting of documents

In addition to above facts, following rules should also be followed while drafting the documents:

(i) Fowlers' five rules of drafting



According to Fowler, “anyone who wishes to become a good writer should endeavour, before he allows himself to be tempted by more showy qualities, to be direct, simple, brief, vigorous and lucid.”

The principle referred to above may be translated into general in the domain of vocabulary as follows:

(a) Prefer the familiar word to the far fetched (familiar words are readily understood).

(b) Prefer the concrete word to the abstract (concrete words make meaning more clear and precise).

(c) Prefer the single word to the circumlocution (single word gives direct meaning avoiding adverb and adjective).

(d) Prefer the short word to the long (short word is easily grasped).

(e) Prefer the Saxon word to the Roman (use of Roman words may create complications to convey proper sense to an ordinary person to understand).

Further, Active voice may be used over passive voice.

(ii) Sketch or scheme of the draft document

It is always advisable to sketch or outline the contents of a document before taking up its drafting. This rule is suggested by Mr. Davidson, a celebrated authority on conveyancing in his book on Conveyancing, 4th Ed., Vol. I, p. 20, where the learned author says as follows:

“The first rule on which a draftsman must act is this-that before his draft is commenced, the whole design of it should be conceived, for if he proceeds without any settled design, his draft will be confused and incoherent, many things will be done which ought to be done and many left undone which ought to be done. He will be puzzled at every step of his progress in determining what ought to be inserted and what is to guide him in his decision because he does not know what his own object is.”

The importance of the above rule cannot be overemphasized and it should be observed by every draftsman.

(iii) Skelton draft and its self-appraisal

After the general scheme of the draft has been conceived, the draftsman should note down briefly the matters or points which he intends to incorporate in his intended draft. In other words, he should frame what is called a “skeleton draft” which should be filled in or elaborated as he proceeds with his work. Once the draft of the document is ready, the draftsman should appraise it with reference to the available facts, the law applicable in the case, logical presentation of the facts, use of simple language intelligible to layman, avoidance of repetition and conceivable mis-interpretation, elimination of ambiguity of facts, and adherence to the use of Fowlers’ Rules of drafting so as to satisfy himself about its contents.

(iv) Special attention to be given to certain documents

Certain documents require extra care before taking up the drafting. For example, it must be ensured that contractual obligations are not contrary to the law in the document, where the facts so warrant to ensure. Further, in all the documents where transfer of immovable property is involved through any of the prescribed legal modes, it is necessary to ensure the perfect title of the transferor to such property proposed to be transferred by causing investigation and searches in relation to such title done through competent lawyers or solicitors in the concerned offices of Registrar of Assurance, local authorities, Registrar of Companies (in the case of the vendor being a corporate unit) etc. In addition, the requisite permissions required under different enactments viz., Income-tax Act, Land Ceiling Laws, Companies Act, 2013, Lessor’s consent in the case of leasehold land, or any compliance desired under other Central or State Laws or personal laws etc. should be planned to be obtained in advance and recited in the documents wherever thought necessary.

(v) Expert's opinion

If the draft document has been prepared for the first time to be used again and again with suitable modification depending upon the requirements of each case it should be got vetted by the experts to ensure its suitability and legal fitness if the corporate executive feels it so necessary.

To sum up, the draftsman should bear in mind the following principles of drafting:

(i) As far as possible the documents should be self-explanatory.

(ii) The draftsman should begin by satisfying himself that he appreciates what he means to say in the document.

(iii) The well drafted document should be clear to any person who has competent knowledge of the subject matter.

(iv) The draft must be readily intelligible to a layman.

(v) The document may not be perfect because it says too much or too little or is ambiguous or contains one or more of the facts because it has to be applied in circumstances which the draftsman never contemplated. This should be avoided in the drafting of the documents.

(vi) Nothing is to be omitted or admitted at random on the document that is to say negative statements should generally be avoided.

(vii) Use of juridical language should be made.

(viii) The text of the documents should be divided into paragraphs containing the relevant facts. Each paragraph should be self-explanatory and should be properly marked by use of Nos. of letters for clause, sub- clause and paragraphs.

(ix) Schedule should be provided in the documents. Schedule is a useful part of the document and should contain the relevant information which forms part of the document. Whether any portion of the document should be put into the schedule(s) will depend upon the circumstances. The schedule is important in the document as it explains useful matters which forms part of the document and should not be ignored and should not be inserted in the body of the document. The main function of the schedule is to provide supplementary test to the document with clarity and convenience.

(x) The active voice is preferable to the passive voice, unless the passive voice in a particular connection makes the meaning more clear. [See Sir Rohland Burrow's Book on Interpretation of Documents, pp. 119 to 121].

Some Do's

1. Reduce the group of words to single word;
2. Use simple verb for a group of words;
3. Avoid round-about construction;
4. Avoid unnecessary repetition;
5. Write shorter sentences;
6. Express the ideas in fewer words;
7. Prefer the active to the passive voice sentences;
8. Choose the right word;

9. Know exactly the meaning of the words and sentences you are writing; and
10. Put yourself in the place of reader, read the document and satisfy yourself about the content, interpretation and the sense it carries.

Some Don’ts

The following things should be avoided while drafting the documents:

1. Avoid the use of words of same sound. For example, the words “Employer” and “Employee”;
2. When the clause in the document is numbered it is convenient to refer to any one clause by using single number for it. For example, “in clause 2 above” and so on;
3. Negative in successive phrases would be very carefully employed;
4. Draftsman should avoid the use of words “less than” or “more than”, instead, he must use “not exceeding”;
5. If the draftsman has provided for each of the two positions to happen without each other and also happen without, “either” will not be sufficient; he should write “either or both” or express the meaning of the two in other clauses.

While writing and typing, the following mistakes generally occur which should be avoided:

1. “And” and “or”;
2. “Any” and “my”;
3. “Know” and “now”;
4. “Appointed” and “Applied”;
5. “Present” and “Past” tense.

BASIC COMPONENTS OF DEEDS

Having understood, the meaning of drafting and conveyancing it is necessary to familiarise with various terms such as deeds, documents, indentures, deed poll etc. These terms are frequently used in legal parlance in connection with drafting and conveyancing. Out of these, the meaning of deeds and documents, have a common link, and used in many a time interchangeably, but it is very essential to draw a line in between.

Deed

In legal sense, a deed is a solemn document. Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability. To take for example Gift Deed, Sale Deed, Deed of Partition, Partnership Deed, Deed of Family Settlement, Lease Deed, Mortgage Deed and so on. Even a power of Attorney has been held in old English cases to be a deed. A bond is also included in the wide campass of the term deed.

For such an instrument covering so wide field it is difficult to coin a suitable definition. A deed may be defined as a formal writing of a non-testamentary character which purports or operates to create, declare, confirm, assign, limit or extinguish some right, title, or interest. Many authorities have tried to define the deed. Some definitions are very restricted in meaning while some are too extensive definitions. The most suitable and comprehensive definition has been given by *Norten on ‘Deeds’* as follows:

A deed is a writing –

(a) on paper, vallum or parchment,

(b) sealed, and

(c) delivered, whereby an interest, right or property passes, or an obligation binding on some persons is created or which is in affirmance of some act whereby an interest, right or property has been passed.

In *Halsbury's Laws of England*, a deed has been defined as "an instrument written on parchment or paper expressing the intention or consent of some person or corporation named therein to make (otherwise than by way of testamentary disposition, confirm or concur in some assurance of some interest in property or of some legal or equitable right, title or claim, or to undertake or enter into some obligation, duty or agreement enforceable at law or in equity or to do, or concur in some other act affecting the legal relations or position of a party to the instrument or of some other person or corporation, sealed with the seal of the party, so expressing such intention or consent and delivered as that party's act and deed to the person or corporation intended to be affected thereby.

A deed is a present grant rather than a mere promise to be performed in the future. Deeds are in writing, signed, sealed and delivered.

Deeds are instruments, but all instruments are not deeds.

Document

"Document" as defined in Section 3(18) of General Clauses Act, 1897 means any matter expressed or described upon any substance by means of letters, figures or marks, or by the more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustration:

- A writing is a document.
- Words printed, lithographed or photographed are documents. A map or plan is a document.
- An inscription on a metal plate or stone is a document. A caricature is a document. Thus, document is a paper or other material thing affording information, proof or evidence of anything.
- All deeds are documents. But it is not always that all documents are deeds. A document under seal may not be a deed if it remains undelivered, e.g. a will, an award, a certificate of admission to a learned society, a certificate of shares or stocks and share warrant to bearer, an agreement signed by directors and sealed with the company's seal, license to use a patented article, or letters of co-ordination.
- Documentary evidence as such is an important piece of evidence of which the Courts and Tribunals take judicial cognizance.

Various Kinds of Deeds

Particular statutory definitions cover different sets of deeds. In the re-statement of American Law in Corpus

Juris Secundum, the following kinds of deeds have been explained:

- A good deed is one which conveys a good title, not one which is good merely in form.
- A good and sufficient deed is marketable deed; one that will pass a good title to the land it purports to convey.
- An inclusive deed is one which contains within the designated boundaries lands which are expected from the operation of the deed.

- A latent deed is a deed kept for twenty years or more in man's escritoire or strong box. A lawful deed is a deed conveying a good or lawful title.
- A pretended deed is a deed apparently or *prima facie* valid.
- A voluntary deed is one given without any "valuable consideration", as that term is defined by law, one founded merely on a "good", as distinguished from a "valuable", consideration on motives of generosity and affection, rather than a benefit received by the donor, or, detriment, trouble or prejudice to the grantee.
- A warranty deed is a deed containing a covenant of warranty.
- A special warranty deed which is in terms a general warranty deed, but warrants title only against those claiming by, through, or under the grantor, conveys the described land itself, and the limited warranty does not, of itself, carry notice of title defects.

Some other terms connected with deeds are of importance of general legal knowledge. These terms are mentioned herein below:

(i) Deed Pool

A deed between two or more parties where as many copies are made as there are parties, so that each may be in a possession of a copy. This arrangement is known as deed pool.

(ii) Deed Poll

A deed made and executed by a single party e.g. power of attorney, is called a deed poll, because in olden times, it was polled or cut level at the top. It had a polled or clean cut edge. It is generally used for the purpose of granting powers of attorney and for exercising powers of appointment or setting out an arbitrator's award. It is drawn in first person usually.

(iii) (a) Indenture

Indenture are those deeds in which there are two or more parties. It was written in duplicate upon one piece of parchment and two parts were severed so as to leave an indented or vary edge, forging being then, rendered very difficult. Indentures were so called as at one time they are indented or cut with uneven edge at the top. In olden times, the practice was to make as many copies or parts as they were called, of the instruments as they were parties to it, which parts taken together formed the deed and to engross all of them of the same skin of parchment. This practice of indenting of deeds is no more used in England and at present indenture means a deed between two or more persons / parties importing the meaning of executed contract of conveyancing.

(b) Cyrographum

This was another type of indenture in olden times. The word "Cyrographum" was written between two or more copies of the document and the parchment was cut in a jugged line through this word. The idea was that the difficulty of so cutting another piece of parchment that it would fit exactly into this cutting and writing constituted a safeguard against the fraudulent substitution of a different writing for one of the parts of the original. This practice of indenting deeds also has ceased long ago and indentures are really now obsolete but the practice of calling a deed executed by more than one party as an "indenture" still continues in England.

(iv) Deed Escrow

A deed signed by one party will be delivered to another as an "escrow" for it is not a perfect deed. It is only a mere writing (Scriptum) unless signed by all the parties and dated when the last party signs it. The deed operates from the date it is last signed. Escrow means a simple writing not to become the deed of the expressed to be bound thereby, until some condition should have been performed. (*Halsbury Laws of England*, 3rd Edn., Vol. II, p. 348).

Question: Which of the given sections defines the term "Document"?

Options:

(A) Section 3(18) of General Clauses Act, 1897

(B) Section 2(19) of Indian Contract Act, 1872

(C) Section 3(16) of Companies Act, 2013

(D) 2(99) of Indian Penal Code, 1860

Answer: (A)

Broad Outlines of Deeds

As explained what is a deed, it is now appropriate to know more about drafting of Deed as a document. Out of various types of deeds, Deeds of Transfer of Property is the most common one. Deeds of Transfer include Deed of Sale, Deed of Mortgage, Deed of Lease, Deed of Gift etc. These deeds effect a transfer of property or interest.

A deed is divided into different paragraphs. Under each part relevant and related information is put in paragraph in simple and intelligible language as explained in the earlier chapter. If a particular part is not applicable in a particular case that part is omitted from the document.

The usual parts or components or clauses of deeds in general are mentioned as follows:

1. Description of the Deed Title

A deed usually begins with the name of the deed and as such the deed should contain the correct title such as "This Deed of Sale", "This Deed of Mortgage", "This Deed of Lease", "This Deed of Conveyance", "This Deed of Exchange", "This Deed of Gift" etc. These words should be written in capital letters in the beginning of document. Where it is difficult to locate the complete transaction out of number of transactions covered under the deed, it may not be possible to give single name to the deed like 'Deed of Gift' and as such it would be better to describe the deed as "This Deed" written in capital letters like "THIS DEED".

This part hints the nature of the deed and gives a signal to the reader about the contents of the Deed.

Sometimes a question may arise whether a particular instrument or document is a deed of conveyance of transfer. To ascertain the nature of the document it becomes necessary to read the language of the document and locate the intention of the parties which is the sole determining factor. Besides the intention of the parties, consideration paid for conveyance is another important aspect in assessing the document as a conveyance. Consideration may be paid initially or may be agreed to be paid in future also. However, in those cases where any condition is stipulated as precedent to the title being passed on to the purchaser then the document does not become conveyance unless the condition is performed. The document may be couched in ambiguous terms then the interpretation of the wordings would throw light on the intention of the parties so as to treat a particular document as conveyance or contract or otherwise. Therefore, naming a deed does not control or change the basic nature and purpose of the deed.

2. Place and Date of Execution of a Deed

The date on which the document is executed comes immediately after the description of the deed. For example, “This Deed of Mortgage made on the first day of January, 2023”. It is the date of execution which is material in a document for the purpose of application of law of limitation, maturity of period, registration of the document and passing on the title to the property as described in the document. Thus, the “date” of the document is important.

Date of execution of document is inscribed on the deed. The date is not strictly speaking an essential part of the deed. A deed is perfectly valid if it is undated or the date given is an impossible one, e.g. 30th day of February.

If no date is given oral evidence will always be admissible to prove the date of execution only it leaves necessary to prove it. However, it is of great importance to know the date from which a particular deed operates. In India there is a short period of 4 months (Section 23 of Registration Act) for its registration from the date of execution within which a deed must be presented for registration. The date is important for application of law of limitation also. In view of the extreme importance of date of execution of deed it should be regarded as an essential requirement. The date of deed is the date on which parties sign or executing it. If several parties to a deed sign the deed on different dates, in such cases, the practice is to regard the last of such dates as the date of deed.

In order to avoid mistake and risk of forgery, the date be written in words and in figures.

The place determines the territorial and legal jurisdiction of a document as to its registration and for claiming legal remedies for breaches committed by either parties to the document and also for stamping the document, as the stamp duty payable on document differs from State to State. An Illustration of this part follows:

“This Deed of Lease made at New Delhi on the Twenty Second day of February Two Thousand and Twenty Three (22.02.2023)” etc.

3. *Description of Parties*

The basic rule is that all the proper parties to the deed including inter-parties should be properly described in the document because inter-parties are pleaded as they take benefit under the same instrument. While describing the parties, the transferor should be mentioned first and then the transferee. Where there is a confirming party, the same may be placed next to the transferor. In the order of parties, transferee comes in the last.

Full description of the parties should be given to prevent difficulty in identification. Description must be given in the following order:

Name comes first, then the surname and thereafter the address followed by other description such as s/o, w/o, d/o, etc. It is customary to mention in India caste and occupation of the parties before their residential address.

However, presently mention of caste is not considered necessary. But to identify the parties if required under the circumstances, it may be necessary to mention the profession or occupation of a person/ party to the deed. For example, Company Secretary Medical Practitioner, Chartered Accountant, or Advocate or likewise.

In the case of juridical persons like companies or registered societies it is necessary that after their names their registered office and the particular Act under which the company or society was incorporated should be mentioned. For example, “XYZ Co. Limited, the company registered under the Companies Act, 2013 and having its registered office at 1, Parliament Street, New Delhi”.

In cases where the parties may be idol then name of the idol and as represented by its “Poojari” or “Sewadar”, or so, should be mentioned. For example, “the idol of Shri Radha Mohan Ji installed in

Hanuman Temple in Meerut being 10, Jawahar Chowk, Lale Ka Bazar, Meerut City acting through its Sewadar Pt. Krishan Murari Lal Goswami of Mathura".

In the case of persons under disability like minor, lunatic, etc. who cannot enter into a contract except through a guardian or a ward, in certain cases through guardian with the permission of the court where necessary, full particulars of the same should be given with the authority from whom a guardian draws power. For example, "Mohan, a minor, acting through Rajender as guardian appointed by Civil Judge Class I, Delhi by order on ________________ passed under section_______ of __________________ __________________ Act or "Mohan, Minor acting through his father and natural guardian Rajender etc." In this way, particulars for the sake of identification of the party should be given. Similarly, in the case of partners, trustees, co-partners, etc. full details of the parties should be given for the sake of identification.

Reference label of parties are put in Parenthesis against the name and description of each party to avoid repetition of their full names and addresses at subsequent places. The parties are then prepared to by their respective lables e.g. "lesser" and "lessee" in a lease deed.

The form is illustrated as under:

(i) Individual

"This lease deed is made at New Delhi on the Monday, ______ day of February 2023.

between

Shri Vinod s/o ______________________ resident of __________________________________ ________________ (Hereinafter called 'lessor' which term shall mean and unless, it be repugnant to the context or meaning thereof mean and include the heirs, legal representative or assigns) of the one part;

and

Shri Rohil s/o _____________________ resident of ___________________________________ ______________ (Hereinafter called 'lessee' which term shall unless it be repugnant to the context or meaning thereof mean and include the heirs, legal representative or assigns) of the other part."

(ii) Companies and organisations

"This lease deed is made at New Delhi on the Monday, ______ day of February 2023.

between

XYZ Retainers Limited, a Public Limited Company incorporated under Companies Act, 2013 having its registered office at __________________________________ represented through ______________________, Company Secretary, (Which term or expression unless repugnant to the context or meaning thereof shall be deemed to include its successors and permitted assigns) hereinafter referred to as the "XYZ Co.", of the "FIRST PART".

and

MNO LLP, a Limited Liability Partnership formed under Limited Liability Partnership Act, 2008 having its office at __________________________________ represented through ______________________, Managing Partner, (Which term or expression unless repugnant to the context or meaning thereof shall be deemed to include its successors and permitted assigns) hereinafter referred to as the "MNO LLP.", of the "SECOND PART".

4. Recitals

Recitals contain the short story of the property up to its vesting into its transferors. Care should be taken that recitals are short and intelligible. Recitals may be of two types. One, narrative recitals which relates to the past history of the property transferred and sets out the facts and instrument necessary to show the title and relation to the party to the subject matter of the deed as to how the property was originally acquired and held and in what manner it has developed upon the grantor or transferor. The extent of interest and the title of the person should be recited. It should be written in chronological order i.e. in order of occurrence. This forms part of narrative recitals. This is followed by introductory recitals, which explain the motive or intention behind execution of deed.

Introductory recitals are placed after narrative recitals. The basic objective of doing so, is to put the events relating to change of hand in the property.

Recitals should be inserted with great caution because they precede the operative part and as a matter of fact contain the explanation to the operative part of the deed. If the same is ambiguous recitals operate as estoppel. Recital offers good evidence of facts recited therein. Recitals are not generally taken into evidence but are open for interpretation for the courts. If the operative part of the deed is ambiguous anything contained in the recital will help in its interpretation or meaning. In the same sense, it is necessary that where recitals contain chronological events that must be narrated in chronological order.

Recitals carry evidentiary importance in the deed. It is an evidence against the parties to the instrument and those claiming under and it may operate as estoppel [*Ram Charan v. Girija Nandini, 3 SCR 841 (1965)*].

Recital generally begins with the words “Whereas” and when there are several recitals instead of repeating the words “Whereas” before each and every one of them, it is better to divide the recitals into numbered paragraphs for example, “Whereas” –

1.

2.

3.

etc.

5. Testatum

This is the “witnessing” clause which refers to the introductory recitals of the agreement, if any, and also states the consideration, if any, and recites acknowledgement of its receipt. The witnessing clause usually begins with the words “NOW THIS DEED WITNESSES”. Where there are more than one observations to be put in the clause the words, “NOW THIS DEED WITNESSES AS UNDER” are put in the beginning and then paragraphs are numbered.

6. Consideration

As stated above, consideration is very important in a document and must be expressed. Mention of consideration is necessary otherwise also, for example, for ascertaining stamp duty payable on the deed under the Indian Stamp Act, 1899. There is a stipulation of penalty for non-payment of stamps, but non-mention of consideration does not invalidate the document.

In the absence of mention of consideration the evidentiary value of document is reduced that the document may not be adequately stamped and would attract penalty under the Stamp Act.

7. Receipt

Closely connected with consideration is the acknowledgement of the consideration amount by the transferor, who is supposed to acknowledge the receipt of the amount. An illustration is as follows:

“Now this Deed witnesses that in pursuance of the aforesaid agreement and in consideration of sum of ₹ 100,000/- (Rupees One Lakh Only) paid by the transferee to the transferor before the execution thereof (receipt of which the transferee does hereby acknowledge)".

8. Operative Clause

This is followed by the real operative words which vary according to the nature of the property and transaction involved therein. The words used in operative parts will differ from transaction to transaction.

For example, in the case of mortgage the usual words to be used are "Transfer by way of simple mortgage" (usual mortgage) etc. The exact interest transferred is indicative after parcels by expressing the intent or by adding *habendum*. (The parcel is technical description of property transferred and it follows the operative words).

9. Description of Property

Registration laws in India require that full description of the property be given in the document which is presented for registration under Registration Act. Full description of the property is advantageous to the extent that it becomes easier to locate the property in the Government records and verify if it is free from encumbrances. If the description of the property is short, it shall be included in the body of the document itself and if it is lengthy a schedule could be appended to the deed. It usually contains area, measurements of sides, location, permitted use, survey number etc. of the property.

10. Parcels Clause

This is a technical expression meaning methodical description of the property. It is thereby a brief description of the property which is the subject matter of the deed. It is necessary that in case of non-testamentary document containing a map or plan of the property shall not be accepted unless it is accompanied by the True Copy. Usually the Parcel Clause starts with the words "All Those ________________________________ and further or description covers as per the type of property subjected to transfer under the deed. This clause includes words such as: Messuages, Tenements, Hereditaments, Land, Water etc. But use of these now has been rendered unnecessary in view of Section 8 of Transfer of Property Act, 1882 given herein below.

"*Section 8. Operation of transfer — Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof."*

This Section has cut down the length of the deeds and do away with description of minute details of the incidents of the property intended to be conveyed.

Examples

And, where the property is machinery attached to the earth, the movable parts thereof;

And, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

And, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

And, where the property is money or other property yielding income, the interest or income thereof accruing *after the transfer takes effect."*

11. Exceptions and Reservations Clause

It refers to admission of certain rights to be enjoyed by the transferor over the property to be agreed to by the transferee. All exceptions and reservations out of the property transferred should follow the parcels and operative words. It is the contractual right of the parties to the contract or to the document to provide exceptions and reservations which should not be uncertain, repugnant or contrary to the spirit of law applicable to a particular document or circumstances. For example, Section 8 of the Transfer of Property Act, 1882 provides for transfer of all the interest to the transferee in the property and any condition opposing the provisions of law will be void. Further, Section 10 of the said Act provides that any condition or limitation absolutely restraining the transferee of property in disposing of his interest in the property is void. So, nothing against the spirit of law can be provided in the document.

The clause generally is signified by the use of words "subject to" in deeds, where it is mentioned, it is advisable that both the parties sign, to denote specific understanding and consenting to this aspect.

12. Premises and Habendum

Habendum is a part of deed which states the interest, the purchaser is to take in the property. The habendum clause can define how long the interest granted will extend. *Habendum* clause starts with the words "TO HAVE AND TO HOLD". Formerly in England if there was a gratuitous transfer, the transferee was not deemed to be the owner of the beneficial estate in the property, the equitable estate wherein remained with the transferor as a resulting trust for him. It was therefore, necessary to indicate in the deed that it was being transferred for the use of the transferee if it was intended to confer an equitable estate in him. It was for that reason that the *habendum* commenced with the words: "to have to hold to the use of". Now it is not necessary to express it so. In the modern deeds, however, the expression "to have and" are omitted. The *habendum* limits the estate mentioned in the parcels. The transferee is mentioned again in the *habendum* for whose use the estate is conveyed. Whatever precedes the *habendum* is called the premises. The parcels or the description of the property usually again included in the premises. If the property conveyed in encumbered, reference thereto should be made in the *habendum*. If the parties to transfer enter into covenants, they should be entered after the *habendum*.

In India such phrases as "to have and to hold" or such an expression as "to the use of the purchaser" can very well be avoided as in cases except those of voluntary transfers such an expression is superfluous.

13. Reddendum

It is peculiar to a deed of lease. Here is mentioned the mode and time fixed for payment of rent. It begins with the word "rendering or paying" with reference to the rent. Thus it is a reserving clause in a deed, especially the clause in a lease that specifies the amount of the rent and when it should be paid.

14. Covenants and Undertakings

The term "covenant" has been defined as an agreement under seal, whereby parties stipulates for the truth of certain facts. In *Whasten's Law Lexicon*, a covenant has been explained as an agreement or consideration or promise by the parties, by deed in writing, signed, sealed and delivered, by which either of the parties, pledged himself to the other than something is either done or shall be done for stipulating the truth of certain facts. Covenant clause includes undertakings also. Usually, covenant is stated first. In some instances the covenants and undertakings are mixed, i.e. can not be seperated in that case, they are joint together, words put for this as "The Parties aforesaid hereto hereby mutually agree with each other as follows:" Such covenants may be expressed or implied.

15. Testimonium Clause

Testimonium is the clause in the last part of the deed. *Testimonium* signifies that the parties to the document have signed the deed. This clause marks the close of the deed and is an essential part of the deed.

The usual form of *testimonium* clause is as under:

"In witness whereof, parties hereto have hereunto set their respective hands and seals the date and year first above written".

In India, seals are not commonly used and in those cases *testimonium* clause reads as under:

"IN WITNESS WHEREOF the parties hereto have signed this DEED on the date above written".

Thus *testimonium* clause can be worded according to the status and delegation of executants. Moreover, this clause in the deed presupposes that the proper parties are signing the document.

16. Signature and Attestation Clause

After *Testimonium* clause, signatures of the executants of the documents and their witnesses attesting their signatures follow. If the executant is not competent enough to contract or is juristic person, deed must be signed by the person competent to contract on its behalf. For example, if the deed is executed by the company or co- operative society then the person authorised in this behalf by and under the articles of association or rules and regulations or by resolution as the case may be should sign the document and seal of the company/society (if applicable) should be so affixed, thereto by mentioning the same.

In India, the Deed of Transfer is not required to be signed by the transferee even though the transferee is mentioned as party in the document. All conditions and covenants are binding upon him without his executing the conveyance, if he consents to it by entering into the lease granted under the conveyance. However, in case the deed contains any special covenant by the transferee or any reservation is made by the transferee then it is always proper to have the deed signed by the transferee also.

Attestation is necessary in the case of some transfers, for example, mortgage, gift, sale, and revocation of will. In other cases, though it is not necessary, it is always safe to have the signatures of the executant attested. Attestation should be done by at least two witnesses who should have seen the executant signing the deed or should have received from the executant personal acknowledgement to his signatures. It is not necessary that both the witnesses should have been present at the same time. There is no particular form of attestation but it should appear clearly that witnesses intended to sign is attesting the witnesses. General practice followed in India is that the deed is signed at the end of the document on the right side and attesting witnesses may sign on the left side. If both the parties sign in the same line then the transferor may sign on the right and the transferee on the left and witnesses may sign below the signatures.

It is essential that the attesting witness should have put his signature, *amino attestandi*, intending for the purpose of attesting that he has seen the executant sign or has received from him, a personal acknowledgement of his signature.

17. Supplemental Deeds

Supplemental deed is a document which is entered into between the parties on the same subject on which there is a prior document existing and operative for adding new facts to the document on which the parties to the document have agreed which otherwise cannot be done by way of endorsement. Thus, supplemental deed is executed to give effect to the new facts in the deed. When a deed or document is required to be supplemented by new facts in pursuance of or in relation to a prior deed this can be affected by either endorsement on the prior deed when short writing would be sufficient, or by executing a separate deed described as supplemental deed. For example, if lessee transfers his right in the lease to another person such transfer may be done by way of endorsement. On the other hand, if the terms of the lease document are to be altered then it becomes necessary to give effect to such alteration through a supplementary deed. In case the alteration to be made in the terms and conditions and is of minor nature and can be expressed by a short writing execution of supplementary deed may not be considered necessary as this can be done by endorsement only. Thus, this is a matter of convenience which of the two alternatives whether endorsement or a supplementary deed is to be used by the parties to a particular document.

For giving effect to the supplemental deed the form of the deed of agreement will be more or less the same as endorsement as explained later in this lesson with the difference that with the other names of the parties the words, "Supplemental (intended to read as annexed) to a deed of ____________________ dated ____________________ made between the parties thereto (or between ____________________) hereinafter called the principal deed", shall be added. In case the particulars of a principal deed are somewhat long it is more convenient to refer to the principal deed in the first recital and to say that this deed (the one under preparation) is supplemental to that (the former) deed; for example, "Whereas this deed is supplemental to a deed of sale made, etc. hereinafter called the 'principal deed'.

There may be situations when the supplemental deed is supplemental to several deeds. In such a case, each prior deed should be mentioned clearly by way of recitals to make the deed with reference to the existing deed intelligible and free from ambiguity.

All supplemental deed should be stamped according to the nature of the transaction which they evidence. In case it is an agreement, it must be stamped as an agreement.

18. Annexures or Schedules

A deed remains incomplete unless particulars as required under registration law about the land or property are given in the Schedule to be appended to the deed. It supplements information given in the parcels. A Site Plan or Map Plan showing exact location with revenue no. Mutation No., Municipal No., Survey No., Street No., Ward Sector/Village/Panchayat/Taluka/District /Plot No., etc. so that the demised property could be traced easily.

IMPORTANT TERMS AND CONDITIONS IN THE AGREEMENT

An agreement which is enforceable at law is called a contract. Generally, when a contract is reduced to writing, the document itself is called an agreement. Accordingly, there cannot be an agreement unless there are two or more parties that agree to perform certain acts or refrain from doing something. A company has to execute numerous commercial agreements and other contracts during the course of its business. But how many company executives possess the simple, easily cultivable, yet rare acumen of concluding their contracts precisely, comprehensively and unambiguously? It is very much desirable and useful to keep in view certain important points in regard to the drafting of contracts, particularly commercial and international trade contracts.

There is no particular form prescribed for the drawing up of trade contracts, except that they must fulfil all the essential requirements of a valid contract under the law applicable to the contract. If the law requires any particular category of contracts to be in writing or to be registered, these formalities must be complied with. A contract may be hand written, type written or printed. It may be as brief or as detailed as the circumstances of a particular trade transaction demand.

However, it is extremely desirable and essential that precise and comprehensive terms and conditions relating to the subject matter and performance of the contract should be incorporated by companies in both domestic and international contracts. In sale-purchase contracts well defined provisions relating to the quality and quantity of goods, the shipment period, price (C.I.F./C&F/F.O.B., etc.), delivery, port of shipment and of destination packing and marketing, mode of payment, insurance, brokerage/commission etc. should also be stipulated. In international contracts additional provisions relating to the applicable law, licences and permits, taxes, duties and charges, exchange rate, etc. also become relevant and important. Some of the important matters that deserve to be provided for in the agreements are discussed briefly hereunder:

1. ***Description of Parties to the Contract:*** Parties to the contract should properly be defined by mentioning their names, status and address. In case of an individual, father's name; and in case of a company, the place where registered office is situated should also be given. In case of firms and companies, the particulars of persons representing them should be invariably given, including detailed particulars of the firm.
2. ***Legal Nature of the Contract:*** In the title or in the introductory part of the contract, the parties should clearly indicate the legal nature of the contract as to whether it is a sale/purchase contract or a commercial agency contract or a contract for technical assistance and advice or building construction and erection contract, etc. so as to avoid any doubt as regards the nature of the contract and the legal position of the parties thereunder.
3. ***Licences and Permits:*** It is desirable to provide for, particularly in international trade contracts, as to which party would be responsible for obtaining export/import licences and the effects of delay, refusal or withdrawal of a license by Government authority, etc. Generally, it is the commercial practice to provide that each party to the contract may obtain the requisite licences in its own country.
4. ***Taxes, Duties and Charges:*** A provision regarding the responsibility for payment of taxes, duties and other charges, if any, may also be included in the contract. In international contracts, it is generally provided that the seller would be responsible for taxes, duties and charges levied in the country of export and the buyer with such charges levied in the country of import. Provision should also be made for fluctuations in the rate of taxes, duties and fees, after the conclusion of the contract and it may be agreed upon whether any increase in such rates would be borne by the buyer or the seller.
5. ***Quality, Quantity and Inspection of Goods:*** Quality of the goods is very important to the buyer in a sale-purchase contract and it is in this area that a number of disputes arise and, therefore, it is necessary to include a suitable provision relating to the description and inspection of the quality and quantity of the goods in the contract. Inspection of the goods may be provided either in the seller's country before shipment or in the buyer's country after delivery of the goods, depending upon the relative convenience of the parties in this regard. Some tolerance of 10 to 15% is generally provided for in regard to the quantity of the goods stipulated in the contract. It has to be provided whether the additional quantity will be calculated at the price quoted in the contract or at a different price.
6. ***Packing:*** Proper packing is very important, particularly in the case of goods which have to be set over a long voyage. Sometimes goods are spoiled during the transit because of poor packing and dispute may arise regarding the responsibility for damage to the merchandise during the transit. Therefore, a proper stipulation regarding packaging of goods according to the nature of the merchandise should be included in the contract. Where the goods are of a fragile or inflammable nature, specialised packaging will have to be provided for them. Similarly, goods which require to be protected from humidity or chemical action of sea water, etc., will require to be packed suitably, to meet the requirements. Another very important matter which needs to be provided for regarding packaging in the contract is the legal specifications, if any, regarding the packing material.

   For example, in certain countries, particular type of grass, etc. cannot be used for packing and if it is used, the customs authorities of the particular country may confiscate the consignment. In such cases, it should be stipulated in the contract that the buyer will inform the seller of any such legal specifications or requirements with regard to the packaging of the goods and that a damage or loss occurring for lack of such information will not be the responsibility of the seller.

7. ***Shipment of the Goods:*** It is desirable to stipulate precise particulars regarding the rights and duties of the parties towards shipment of the goods, i.e., the time, date and port of shipment, name of the ship and other ship particulars. It may also be stipulated as to whether and up to what time the shipment may be delayed by the seller. Sometimes, a penalty is provided for delay in shipment according to the time of delay.

8. ***Insurance:*** A provision regarding insurance of the merchandise is also made in the contract, as it is usual to insure the goods during transit particularly when the goods are to be shipped overseas. The insurance provision will state as to which party will be responsible for taking out insurance and what type of insurance cover has to be taken.

9. ***Documentation:*** In modern business transactions, it is sometimes necessary for the seller to supply detailed specifications, literature, etc. relating to the goods particularly if the goods are of scientific or technical nature. In such cases, it is usual to provide in the contract as to whether the technical documentation supplied by the seller will become the property of the buyer or it has to be returned to the seller after a stipulated time. It is also desirable to provide that the technical and confidential information contained in the documentation should be kept confidential by the buyer and that it will not be transmitted by him to a third-party without the permission of the seller.

10. ***Guarantee:*** Sometimes the goods sold are of such a nature that the buyer insists for guarantee regarding their use and performance for a particular period. Under a guarantee clause, the seller is held responsible for the defects appearing in the goods during the period of the guarantee. The seller is usually given an option to remove the defects in the goods either by replacement or by repair. The replaced or repaired goods will usually be given a new guarantee of the same length of time as the original goods but a different period can also be provided for the replaced goods.

11. ***Passing of the Property and Passing of the Risks:*** It is very important to provide for the exact point of time when the title or the property in the goods and the risk will pass from the seller to the buyer. This is important to ascertain as to whether the seller or the buyer will be responsible for the damage or loss to the goods during transit at a particular point of time. Moreover, the control over the goods will be with the person in whom the title or the property in the goods vests. Similarly, it is necessary and useful to provide for the point of time at which the risk in the goods will pass from the seller to the buyer.

12. ***Amount, Mode and Currency of Payment:*** It is useful to provide for the amount, mode and currency in which the price for the goods has to be paid. Modes of payment may be on Documents against Acceptance (D/A) or Documents against Payment (D/P) basis or it may be a Letter of Credit or otherwise as per the agreement of the parties. One of the most important matters which needs to be provided in international contracts relates to the exchange rate. It is advisable to provide the exchange rate of the currency of payment in terms of dollar, pound or any other currency agreed to by the parties, so that if a devaluation, revaluation or fluctuation takes place before the payment of price, the liability of the buyer and the seller regarding the amount of payment may be clearly known.

13. ***Force Majeure:*** Another very important provision witnessed in modern commercial contracts relates to force majeure or excuses for non-performance. This provision defines as to what particular circumstances or events beyond the control of the seller would entitle him to delay or refuse the performance of the contract, without incurring liability for damage. It is usual to list the exact circumstances or events, like strike, lockout, riot, civil commotion, Government prohibition, etc. which would provide an excuse to the seller to delay or refuse the performance. It may be further provided that events of a similar nature, which are beyond the control of the seller and which could not have been avoided with due diligence would also furnish the above relief.

14. ***Proper Law of Contract:*** When both the parties to a contract are resident in the same country, the contract is governed by the laws of the same country. However, in international contracts, the parties

are subject to different legal systems and, therefore, they have to choose a legal system which will govern the rights and duties of the parties. Therefore, it is desirable and necessary to stipulate the proper law of contract in international contracts.

15. ***Settlement of Disputes through Alternate Dispute Resolution (ADR)*:** The last, but not the least, important is the provision regarding settlement of disputes under the contract by ADR. It is usual to provide for an ADR clause in the contract. A suitable ADR clause may be provided by the parties by mutual agreement. It is also desirable to provide for the mode of appointment under ADR and also for the venue for the purpose of resolving disputes through ADR.

Below mentioned matter are necessary for all the agreements but should be given special attention for Agreement to Sell/Purchase

1. **Contracting Parties:** The vendor and the purchaser must be sufficiently described, irrespective of the fact that the parties know each other. There must be reciprocity of interest between the person who wants to enforce the agreement and the person against whom it is sought to be enforced. A stranger to the agreement has no enforceable claim, and as such, no court shall entertain his claim for specific performance. However, specific performance may be enforced not only against a party to the contract, but also against a person claiming title under it. If one of the parties to the agreement is acting in his representative capacity, such capacity must be clearly and precisely disclosed and his authority to act in that capacity must form part of the agreement.

   Legal representatives of parties have a right to require specific performance of a contract or are bound by the promise to perform the contract in the absence of a contrary intention. This rule does not apply where the obligation is personal in nature. As a rule, obligation under a contract cannot be assigned except with the consent of the promisee. On the other hand, rights under a contract are assignable unless the contract is personal in nature or the rights are incapable of assignment either under the law or under the agreement between the parties. If one of the parties to the agreement is acting in his representative capacity, such capacity must be clearly and precisely disclosed and his authority to act in that capacity must form part of the agreement. It is, however, usual to have a clause in a deed specifically stating that the parties shall include their executors, administrations, heirs, legal representatives and assigns.

2. **Consideration:** Price is the essence of an agreement of sale/purchase and unless the price is clearly and precisely disclosed in the agreement, there is no enforceable contract between the parties because if no price is named in the agreement, the law does not imply, as in the case of sale of goods, that a contract to buy/sell at a reasonable price is implied. Therefore, in all sales, the price is an essential ingredient and where it is neither ascertained nor rendered, the contract is void for incompleteness and is incapable of enforcement. Price may not necessarily be in the form of money, it may be any other consideration. The word “price” is comprehensive enough to include any other lawful consideration. If any earnest money is paid, the same should be stated and the consequences arising in breach of the agreement may be stipulated for, namely, by forfeiture of the deposit, payment of a fixed sum by the vendor, if the breach is committed by the purchaser or the vendor, respectively.

3. **Subject Matter:** Property of any kind subject to the provisions of the Transfer of Property Act, 1882, and those of any other applicable law or custom may be sold/purchased. Transferability is the general rule and the right to property includes the right to transfer the property to another person. The property, i.e., the subject-matter of the agreement, must be described in detail giving its precise situation and the extent of interest agreed to be conveyed therein should be clearly stated. If the property is subject to certain charges, easements, encumbrances, restrictions, covenants etc., the same should be clearly stated so that the purchaser knows the real nature of the property he is purchasing. The vendor should not conceal any material particular with regard to the property he is selling, which the purchaser has a right to know.

4. **Time for Performance:** If the time for performance is the essence of the agreement, the same should be clearly stipulated and the consequences of non-performance within the stipulated time should also be clearly and precisely declared.

GUIDELINES FOR USE OF PARTICULAR WORDS AND PHRASES FOR DRAFTING AND CONVEYANCING

There cannot be any clear cut rule which can be laid down as guideline for using the particular words and phrases in the conveyancing. However, the draftsman must be cautious about the appropriate use of the words and should be clear of its meaning. The following rules may be prescribed for the guidance of the draftsman for using any particular word and phrase in the drafting of the documents:

(1) For general words refer to ordinary dictionary for ascertaining the meaning of the words. For example, Oxford Dictionary or Webster's Dictionary or any other standard dictionary may be referred to for this purpose.

(2) For legal terms refer to legal dictionary like Wharton's Law Lexicon or other dictionaries of English Law written by eminent English Lexicographers as Sweet Cowel, Byrne, Stroud, Jowit, Mozley and Whiteley, Osborn etc. In India, Mitra's Legal and Commercial Dictionary is quite sufficient to meet the requirements of draftsman.

(3) As far as possible current meaning of the words should be used and if necessary, case law, where such words or phrases have been discussed, could be quoted in reference.

(4) Technical words may be used after ascertaining their full meaning, import of the sense and appropriate use warranted by the circumstances for deriving a technical or special meaning with reference to the context.

(5) The choice of the words and phrases should be made to convey the intention of the executor to the readers in the same sense he wishes to do.

(6) The draftsman should also use at times the recognised work of eminent legal expert on the interpretation of statutes. In Maxwell's Interpretation of Statutes use of some of the words is explained for the guidance of the readers.

The above guidelines acquaint the students of a few instances leading to the choice of appropriate word or phrase. As a matter of fact, much will depend upon the executives own skills and talents as to how they express the wishes of the company in limited words befitting to an expression of a certain event or description of facts.

USE OF APPROPRIATE WORDS AND EXPRESSIONS

After discussing the guidelines for use of particular words and phrases in drafting of documents, meaning of some of the terms commonly used in drafting of deeds and documents is discussed hereunder:

Instrument: The word "instrument" has been interpreted in different judgements by different courts with reference to the different enactments. As such, the meaning of instrument has to be understood with reference to the provision of a particular Act. For example, under Section 2(b) of the Notaries Act, 1952, and Section 2(14) of the Indian Stamp Act, 1899, the word "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded.

The expression is used to signify a deed *inter partes* or a charter or a record or other writing of a formal nature.

But in the context of the General Clauses Act, it has to be understood as including reference to a formal legal writing like an order made under constitutional or statutory authority. Instrument includes an order made by the President in the exercise of his constitutional powers (*Mohan Chowdhary v. Chief Commissioner, AIR 1964 SC 173*).

In another context, "Instrument" includes awards made by Industrial Courts (*Purshottam v. Potdar, AIR 1996 SC 856*).

"Instrument" does not include Acts of Parliament unless there is a statutory definition to that effect in any Act (*V.P. Sugar Works v. C.I. of Stamps U.P. AIR 1968 SC 102*).

A will is an instrument (*Bishun v. Suraj Mukhi , AIR 1966 All. 563*).

The word "instrument" in Section 1 of the Interest Act is wide enough to cover a decree (*Savitribai v. Radhakishna, AIR 1948 Nag. 49*).

Considering various meanings of the term instrument, it becomes necessary that the words with specific meaning should be used unless the context otherwise require.

Usage of *"AT", "NEAR", "ON":*

"AT", "NEAR", "ON", "in the vicinity" and the like: In construing a description, the word "at" when applied to a place, is less definite in meaning than "in" or "on". Primarily, "at" signifies nearness, and is thus a relative term. When used in describing the location of real estate the word "near" signifies relativity in a greater or less degree. It may be equivalent to "at" or it may import the sense of "at" or "along" as in the expression "along the sea shore".

The word "on" when used in describing the location of the land with reference to some geographical feature may mean, "in the vicinity of". The phrase "in the vicinity" imports nearness to the place designated but not adjoining or abutting on it. The word "immediate" when used to qualify the word "vicinity" may signify adjoining.

Usage of "Adjoining", "Adjacent" or "Contiguous"

In the absence of anything to the contrary indicated by the deed itself words descriptive of the land conveyed are construed according to their proper and most generally known signification, rather than according to their technical sense with the view of giving effect to the probable intention of the parties. Nevertheless, specific terms of description may be regarded as having a technical meaning unless controlled by something else in the deed.

The word "adjoining" does not necessarily import that the boundary of the land conveyed is conterminous with the boundary of the adjoining land, for all that the word implies is contiguity, and hence it is equally applicable where one boundary is shorter than the other. It has been held that a common corner will make two tracts of land "contiguous".

The term "adjacent" is not synonymous and "abutting". It may imply contiguity but the term is more often a relative one depending for its meaning on the circumstances of the case.

Therefore, it is pertinent that the correct word with intended meaning is used while drafting.

Usage of LOT

"LOT": The term "lot" is sometimes used in restrictive sense as a wood lot, a house lot, or a store lot, but where the term is used unqualifiedly, especially if it refers to a lot in a certain range or right, it is almost uniformly used in a technical sense and means a lot in a township as duly laid out by the original proprietors. Lots from lands which have been surveyed and laid out in ranges and townships which are numbered in regular sequence may be sold and described by number and range without a more particular description. In the absence of qualifying words, the designation of the number of a lot will be taken to refer to the original place of the city or town. Generally speaking, in a conveyance of fractional part of a designated lot, the word "lot" refers to that portion of the premises set aside for private use, and hence does not include the right to occupancy of any part of a street on which it abuts.

Usage of "And", "Or"

As used in deeds, the word "and" ordinarily implies the conjunctive, while "or" ordinarily implies the alternative or is used as a disjunctive to indicate substitution. There is a presumption that when the word "or" is used in the *habendum* of deed, the grantor intended it to express its ordinary meaning as disjunctive, and that he did not intend to use the word "and" which will be read "or" and "or" will be read "and" but such construction is never resorted to for the purpose of supplying an intention not otherwise appearing.

Usage of "Subject to"

The words "subject to" in a deed conveying an interest in real property are words of qualification of the estate granted. Even though the words "Subject to" mentioned in the phrase "subject to a specified encumbrance" bear the obvious meaning that only the equity of redemption belonging to the grantor passes by a deed, such words may, under the circumstances of the particular case, be ambiguous. To ascertain the intention in such an ambiguous case, all the circumstances are taken into consideration, and the primary meaning of the words "subject to" will be departed from, if necessary, in order to effectuate what seems best to accord with intention of the parties. Of course, the rights of an earlier grantee to which a later grant is expressed to be subject are neither abridged nor enlarged by the later grant.

Use of the terms "excepting", "reserving" and the like

While there is a well defined distinction between a "reservation" and an "exception" in deed, the use, in the instrument of conveyance, of one or the other of these terms is by no means conclusive of the nature of the provisions. In fact, it may be said that since these two terms are commonly used interchangeably little weight is given to the fact, that the grantor used one or the other. The use of the technical word "exception" or "reservation" will not be allowed to control the manifest intent of the parties, but that such words will be given a fair and reasonable interpretation looking to the intention of the parties, which is to be sought from a reading of the entire instrument, and when their intention is determined it will be given effect, provided no settled rules of law are thereby violated. In cases of doubt, the question will be determined in the light of the subject matter and circumstances of the case, and the deed will be construed, where possible, so as to give it validity.

Usage of "More or less", "about", "estimated" and the like

The words "more or less" when related to the description of the property in a deed, are generally construed with reference to the particular circumstances involved. In relation to the quantity of land conveyed, the description is not rendered indefinite by the addition of the words "more or less" to the specified area. Such words are used as words of precaution and safety and are intended to cover unimportant inaccuracies. They and other words of like import regarding the quantity of acres intended to be conveyed are regarded as matters of description of the land, and not of essence of the contract, and the buyer as a general rule takes the risk of quantity in the absence of any element of fraud. But in case of a considerable and material discrepancy in quantity, relief may be had after the conveyance. Accordingly, where the deed purports to convey the whole of a designated tract, described whatever may be its acreage, the grant is not defeated by a discrepancy between the recited and the actual area. When used with reference to the quantity of land conveyed, the words "estimated" and "about" are synonymous with the phrase "more or less".

In construing a description as to the length of a line, the words “more or less” may be deemed to have some meaning so as not to fix the distance absolutely even though they may be often construed as having practically no effect.

Words indicating compass points

The words “north”, “south”, etc. indicating points of the compass, may, no doubt, be controlled or qualified in their meaning by other words of description used in connection with them, but unless qualified or controlled by other words, they mean “due north”, “due south” etc. Moreover, the words “Easterly”, “Westerly”, etc. when used alone in the description of land, will be construed to mean “due East”, “due West”, etc. unless other words are used to qualify their meaning. Where, however, the land is described as being the “West half” of a city lot and a North to South line will divide the lot almost diagonally, it has been held that parol evidence can be introduced on the theory that such evidence neither enlarges nor diminishes the grant, but merely identifies the land.

AIDS TO CLARITY AND ACCURACY

The following discussion is devoted to devices that are resorted to provide clarity and accuracy in documents:

Interpretation of Deeds and Documents

In India, in the absence of any legislation on conveyancing, it becomes imperative to have knowledge about the important rules of law of interpretation so as to put right language in the documents, give appropriate meaning to the words and phrases used therein, and incorporate the will and intention of the parties to the documents. There is no law in India on the interpretation of documents also. On the subject of interpretation of statutes Maxwell’s works published by Butterworth commands wide acceptance by the judiciary all over India. Based on the said work a set of principles has been evolved for the interpretation and construction of documents, assessing the language and assigning the exact meaning to the words and phrases to be used in the documents. Some of the relevant principles of interpretation of deeds and documents are discussed below:

(A) **Informal Agreements:** In interpretation of informal agreements, the rule to be applied is that of reasonable expectation; that is to say, the agreement is to be interpreted in the sense in which the party who used the words in question should reasonably have apprehended that the other party may apprehend them. If the intention is manifested ambiguously, the party manifesting the same in an ambiguous manner ought to have had reason to know that the manifestation may reasonably bear more than one meaning and the other party believes it to bear one of those meanings, having no reason to know that it bears another meaning that is given to it.

(B) **Formal Agreements:** Where the agreement is formal and written, the following rules of the interpretation may be applied:

(1) A deed constitutes the primary evidence of the terms of a contract, or of a grant, or of any other disposition of property (Section 91 of the Indian Evidence Act). The law forbids any contradiction of, or any addition, subtraction or variation in a written document by any extrinsic evidence, though such evidence will be admissible to explain any ambiguity (Section 92 of the Indian Evidence Act). The document should, therefore, contain all the terms and conditions, preceded by recital of all relevant and material facts.

(2) In cases of uncertainty, the rules embodied in provisos 2 and 6 of Section 92 of the Indian Evidence Act can be invoked for construing a deed. The sixth proviso enables the court to examine the facts and surrounding circumstances to which the language of the document may be related, while the second proviso permits evidence of any separate oral agreement on which the document is silent and which is not inconsistent with its terms.

(3) The cardinal rule is that clear and unambiguous words prevail over any hypothetical considerations or supposed intention. But if the words used are not clear and unambiguous the intention will have to be ascertained. In other words, if the intention of the parties can be gathered from the words and expressions used in a deed, such an intention does not require to be determined in any other manner except giving the words their normal or natural and primary meanings. It is the dominant intention of the document as disclosed from its whole tenor, that must guide the construction of its contents.

(4) In case the terms are not unambiguous it is legitimate to take into account the surrounding circumstances for ascertaining the intention of the parties. The social milieu, the actual life situations and the prevailing conditions of the country are also relevant circumstances.

(5) Sometimes a contract is completed in two parts. At first an executory contract is executed and later on an executed contract. In case of any difference between the preliminary contract and final contract, the terms of the latter must prevail.

(6) If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the latter clause is to be rejected as repugnant and the earlier clause prevails.

(7) The court must interpret the words in their popular, natural and ordinary sense, subject to certain exceptions as;

  (i) where the contract affords an interpretation different from the ordinary meaning of the words; or

  (ii) where the conventional meanings are not the same with their legal sense.

(8) Hardship to either party is not an element to be considered unless it amounts to a degree of inconvenience or absurdity so great as to afford judicial proof that such could not be the meaning of the parties.

(9) All mercantile documents should receive a liberal construction. The governing principle must be to ascertain the intention of the parties through the words they have used. The Court should not look at technical rules of construction, it should look at the whole document and the subject matter with which the parties are dealing, take the words in their natural and ordinary meaning and look at the substance of the matter.

The meaning of such a contract must be gathered by adopting a commonsense approach and it must not be by a narrow, pendantic and legalistic interpretation.

(10) No clause should be regarded as superfluous, since merchants are not in the habit of inserting stipulations to which they do not attach some value and importance. The construction adopted, should, as far as possible, give a meaning to every word and every part of the document.

(11) Construction given to mercantile documents years ago, and accepted in the mercantile world should not be departed from, because documents may have been drafted in the faith thereof.

(12) If certain words employed in business, or in a particular locality, have been used in particular sense, they must prima facie be construed in technical sense.

(13) The ordinary grammatical interpretation is not to be followed, if it is repugnant to the general context.

(14) Antecedent facts or correspondence, or words deleted before the conclusion of the contract cannot be considered relevant to ascertain the meaning.

(15) Evidence of acts done under a deed can, in case of doubt as to its true meaning, be a guide to the intention of the parties, particularly when acts are done shortly after the date of the instrument.

(16) Unless the language of two documents is identical, and interpretation placed by courts on one document is no authority for the proposition that a document differently drafted, though using partially similar language, should be similarly interpreted. However, judicial interpretation of similar documents in the past can be relied on, but as the effect of the words used must inevitably depend on the context and would be conditioned by the tenor of each document such decisions are not very useful unless words used are identical.

(17) If the main clause is clear and the contingency mentioned in the proviso does not arise, the proviso is not attracted at all and its language should not be referred to for construing the main clause in a manner contradictory to its import.

(18) The fact that a clause in the deed is not binding on the ground that it is unauthorised cannot *ipso facto* render the whole deed void unless it forms such an integral part of the transaction as to render it impossible to severe the good from the bad.

(19) As a general rule of construction of documents, the recitals are not looked into, if the terms of the deed are otherwise clear. If in a deed the operative part is clear, or the intention of the parties is clearly made out, whether consistent with the recitals or not, the recitals have to be disregarded. It is only when the terms of a deed are not clear or are ambiguous or the operative part creates a doubt about the intention of the parties that the recitals may be looked into to ascertain their real intention. If there are several recitals in a deed, as is the case with indentures, and there is at the same time some ambiguity in the operative part of the deed, it may be resolved by giving preference to such a recital as may appear to be the most important to convey the intention of the parties. An ambiguity in the recitals, when the terms of the contract or the intentions of the parties are clear from the operative part, has no importance. If the recitals refer to an earlier transaction evidenced by a deed, such reference does not amount to an incorporation of the terms and conditions of the earlier deed unless the parties so intended.

(20) Sometimes a standard form is used, particularly in contracts with government departments or big corporations. In these standard printed forms, words not applicable are deleted according to the requirements of individual transactions. A question often arises, whether reference may be made to the deleted words for interpretating the terms of the contract. The true rule is that the court must first look at the clause without the deleted words, and only if that clause is ambiguous then for solving the ambiguity assistance may be derived by looking at the deleted words. If something is added in handwriting or by typewriter to a printed form, such addition should prevail over the language in print.

(21) If an alteration by erasure, interlineations, or otherwise is made in a material part of a deed after its execution by, or with the consent of, any party thereto or person entitled thereunder, but without the consent of the party or parties liable thereunder, the deed is thereby made void, but only with prospective effect. However, an alteration which is not material i.e., which does not vary the legal effect of the deed in its original state but which merely express that which was implied by law in the deed as originally written, or which carries out the intention of the parties already apparent on the face of the deed and does not otherwise prejudice the party liable thereunder will not make the deed void.

Legal Implications and Requirements

Drafting of documents is very important part of legal documentation. Documents are subject to interpretation when no clear meaning could be inferred by a simple reading of the documents. The legal implications of drafting, therefore, may be observed as under:

(a) Double and doubtful meaning of the intentions given shape in the document.

(b) Inherent ambiguity and difficulties in interpretation of the documents.

(c) Difficulties in implementation of the objectives desired in the documents.

(d) Increased litigation and loss of time, money and human resources.

(e) Misinterpretation of facts leading to wrongful judgement.

(f) Causing harm to innocent persons.

ENDORSEMENTS

Endorsement means to write on the back or on the face of a document wherein it is necessary in relation to the contents of that document or instrument. The term “endorsement” is used with reference to negotiable documents like cheques, bill of exchange etc. For example, on the back of the cheque to sign one’s name as Payee to obtain cash is an endorsement on the cheque. Thus, to inscribe one’s signatures on the cheque, bill of exchange or promissory note is endorsement within the meaning of the term with reference to the Negotiable Instrument Act, 1881. Endorsement is used to give legal significance to a particular document with reference to new facts to be added in it. Endorsement helps in putting new facts in words on such document with a view to inscribe with a title or memorandum or to make offer to another by inscribing one’s name on the document or to acknowledge receipt of any sum specified by one’s signatures on the document or to express definite approval to a particular document. Thus, endorsement is an act or process of endorsing something that is written in the process of endorsing when a provision is added to a document altering its, scope or application. Under the Registration Act, 1908 the word endorsement’ has significant meaning and it applies to entry by the Registry Officer on a rider or covering slip tendered for registration under the said Act.

In conveyancing practices, endorsements which are of general use and for which no supplementary deed is necessary are those which relate to part payment or acknowledgement of a debt by a debtor. The main stress is that endorsement should represent or exhibit the intention of the parties to the document. Thus, in the context of negotiable instruments, endorsements which are made on the document will definitely differ with reference to the nature and content of the prior document and will be added to the endorsement explained above. Endorsements are common for negotiating a negotiable document or instrument or transfer of bill of exchange or policy or insurance or Government securities and there is no particular form of endorsement prescribed in such cases. Endorsements follow the forms by customs, conventions and trade practices or banking norms.

The following forms of endorsement respectively could be used by business executives while facing a situation of altering the documents:

Form of Endorsement: The endorsement on the document may begin either by saying:

This deed made on this ______ day of ____________________, 2023 between within named and within named or directly like, “The parties to the within written deed hereby agree as follows:

The operative part of the deed then follows usually without any recital unless any recital is considered necessary to make the deed intelligible. Generally, no recital is added but there may be exception in different situations to this rule. The original deed on which endorsement is made as referred to in the endorsement is within the written deed and the parties, recital covenants in the original deed are referred to as within named "Lessor" or "within named parties" or "within mentioned covenants" or "within described use" or "the garden described in the schedule of the within written deed".

These are the examples when endorsement is to be made for the first time in the document.

There may be situations where subsequent endorsement becomes necessary on the document which bears already an endorsement. In such eventuality when endorsement is made one after another reference in the latter to the former endorsement shall be made by the use of the word "above" instead of M/s "within". After the operative part of endorsement the usual *testimonium* clause shall be added ending with signatures of executants and of witnesses, if necessary.

2. For giving effect to the supplemental deed the form of the deed of agreement will be more or less the same as the prior document with the difference that with the other names of the parties the words, "Supplemental (intended to read as annexed) to a deed of ____________________ dated ____________________ made between the parties thereto (or between ____________________) hereinafter called the principal deed", shall be added. In case the particulars of a principal deed are somewhat long it is more convenient to refer to the principal deed in the first recital and to say that this deed (the one under preparation) is supplemental to that (the former) deed; for example, "Whereas this deed is supplemental to a deed of sale made, etc. hereinafter called the 'principal deed'.

There may be situations when the supplemental deed is supplemental to several deeds. In such a case, each prior deed should be mentioned clearly by way of recitals to make the deed with reference to the existing deed intelligible and free from ambiguity.

All endorsements should be stamped according to the nature of the transaction which they evidence. In case the endorsement is made for receipt of money which should be stamped as a receipt. In case it is an agreement, it must be stamped as an agreement. Some documents if endorsed are exempted from stamp duty, for example, endorsement made on the prior deed, receipt of mortgage money, endorsement on mortgage deed. Similarly, transfer of bill of exchange or policy of insurance or security of Government of India can be endorsed without attracting the stamp duty.

STAMPING OF THE DEEDS

The draft of document is required to be approved by the parties. In case of companies it is approved by Board of Directors in their meeting or by a duly constituted committee of the board for this purpose by passing requisite resolution approving and authorising of its execution. The document after approval is engrossed i.e. copied fair on the non-judicial stamp-paper of appropriate value as may be chargeable as per Indian Stamp Act. In case document is drafted on plain paper but approved without any changes, it can be lodged with Collector of Stamps for adjudication of stamp duty, who will endorse certificate recording the payment of stamp duty on the face of document and it will become ready for execution.

E-stamping is a computer based application and a secured electronic way of stamping documents. The prevailing system of physical stamp paper/franking is being replaced by E-stamping system. The Stock Holding Corporation of India Limited (SHCIL) is the Central Record Keeping Agency (CRA). E-Stamping is a computer-based procedure and a secure manner for the state to pay non-judicial stamping duties. The prevailing system of physical stamp paper / franking is being replaced by E-Stamping system.

E-stamping is beneficial for varied reasons such as E-stamps are less time-consuming; They are very easily accessible; They save cost; e-Stamp Certificate generated is tamper proof; e-Stamp Certificate generated has a Unique Identification Number; they are Easily accessible, they are Secure and user friendly.

LESSON ROUND-UP

- Importance of drafting and conveyancing for a company's executive could be well imagined as the company has to enter into various types of agreements with different parties and have to execute various types of documents in favour of its clients, banks, financial institutions, employees and other constituents.
- Technically speaking, conveyancing is the art of drafting of deeds and documents whereby land or interest in land i.e. immovable property, is transferred by one person to another; but the drafting of commercial and other documents is also commonly understood to be included in the expression.
- Having understood the meaning of conveyance, it becomes necessary to understand the distinction between conveyance and contract before discussing basic requirements of conveyance or deed of transfer.
- As discussed above, drafting of legal documents is a skilled job. A draftsman, in the first instance, must ascertain the names, description and addresses of the parties to the instrument. He must obtain particulars about all necessary matters which are required to form part of the instrument.
- According to Fowler, "anyone who wishes to become a good writer should endeavour, before he allows himself to be tempted by more showy qualities, to be direct, simple, brief, vigorous and lucid."
- A deed between two or more parties where as many copies are made as there are parties, so that each may be in a possession of a copy. This arrangement is known as deed pool.
- A deed made and executed by a single party e.g. power of attorney, is called a deed poll, because in olden times, it was polled or cut level at the top. It had a polled or clean cut edge. It is generally used for the purpose of granting powers of attorney and for exercising powers of appointment or setting out an arbitrator's award. It is drawn in first person usually.
- As explained what is a deed, it is now appropriate to know more about drafting of Deed as a document. Out of various types of deeds, Deeds of Transfer of Property is the most common one. Deeds of Transfer include Deed of Sale, Deed of Mortgage, Deed of Lease, Deed of Gift etc. These deeds effect a transfer of property or interest.
- There is no particular form prescribed for the drawing up of trade contracts, except that they must fulfil all the essential requirements of a valid contract under the law applicable to the contract. If the law requires any particular category of contracts to be in writing or to be registered, these formalities must be complied with. A contract may be hand written, type written or printed. It may be as brief or as detailed as the circumstances of a particular trade transaction demand.
- There cannot be any clear cut rule which can be laid down as guideline for using the particular words and phrases in the conveyancing. However, the draftsman must be cautious about the appropriate use of the words and should be clear of its meaning.
- In India, in the absence of any legislation on conveyancing, it becomes imperative to have knowledge about the important rules of law of interpretation so as to put right language in the documents, give appropriate meaning to the words and phrases used therein, and incorporate the will and intention of the parties to the documents.
- Endorsement means to write on the back or on the face of a document wherein it is necessary in relation to the contents of that document or instrument. The term "endorsement" is used with reference to negotiable documents like cheques, bill of exchange etc.

- The draft of document is required to be approved by the parties. In case of companies it is approved by Board of Directors in their meeting or by a duly constituted committee of the board for this purpose by passing requisite resolution approving and authorising of its execution.

GLOSSARY

Lexicographers: Dictionary Writer

Cyrographum: Word written between two or more copies of the document and the parchment was cut in a jugged line through this word.

Conveyancing: Conveyancing is an art of drafting of deeds and documents whereby immovable property is transferred by one person to another.

Habendum: Habendum is a part of deed which states the interest, the purchaser is to take in the property.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. As a company secretary, please advise what are the preliminary requirements of drafting which a company executive should consider before drafting a document?
2. Draw guidelines for use of particular words or phrases in drafting and conveyancing.
3. As a company secretary, please advise what are the principles which a corporate executive should keep in mind while drafting company's documents?
4. What are the "do's" and "don'ts" which a draftsman should keep in mind while drafting company's documents?
5. Discuss briefly the Components of Deed of Transfer of Property.
6. What do you understand by endorsement and supplemental deeds? Does such an endorsement or supplemental deed attract stamp duty?
7. Explain "Habendum". What does a Habendum clause signify in a document? How does the absence of a Habendum clause in a document effect the validity of the document?
8. Write short note on "Conveyance of Property".
9. Discuss briefly the benefits of Fowler's five rules of Drafting.
10. Prepare a draft rent agreement by assuming necessary facts after completion of this topic and analyse the same carefully that whether all important ingredients of agreements are covered in the draft.

LIST OF FURTHER READINGS

- Drafting, Conveyancing and Pleadings (1982); Latest Ed., N.M. Tripathi (P.) Ltd., Bombay.

  G.M. Kothari and Arvind G. Kothari

- Conveyancing Drafting & Interpretation of Deeds (1985); Latest Edition

  N.S. Bindra

- Commerical Drafting & Conveyancing, Latest Ed.; Bharat Law House, New Delhi.

  Dr. J.C. Verma
- Forms and Precedents of Conveyancing (1999): Latest Ed. Rev. by C.R. Datta and M.N. Das.

  DeSouza
- Drafting Corporate & Commercial Agreements (2005); Latest Ed., Universal Law Publishing Co., Delhi.

  Rodney D. Ryder

OTHER REFERENCES (Including Websites/Video Links)
https://www.icsi.edu/home/cs/

Laws relating to Drafting and Conveyancing

Lesson 3

KEY CONCEPTS

■ Execution of Agreements ■ Offer and Acceptance ■ Void and Voidable Contracts ■ Specific Reliefs ■ Specific Performance ■ Transfer of Properties ■ Registration of Documents ■ Stamping of Instruments ■ Adjudication of Stamp Duty ■ Authorisation to Attorneys

Learning Objectives

To understand:

- Formation of Contract
- Essentials for entering into a Contract
- Competent Parties for an Agreement
- How can property be recovered
- Specific Enforcement of Contracts
- Transfer by way of Sale, Mortgages, Lease, Easement, Gifts etc.
- The requirements of registration of documents
- Effects of Non-registration
- Payments of Stamp Duties
- Adjudication of Stamp Duties
- Execution of Power-of-Attorneys

Lesson Outline

- Communication, Acceptance and Revocation of Proposals
- Essentials of Contracts
- Contingent Contracts
- Specific Reliefs
- Declaratory Decrees
- Sale
- Mortgage
- Lease & Licences
- Gift
- Compulsory and Optional Registration of Documents
- Time and Place of Registration
- Effects of Registration and Non-registration of Documents
- Instruments Chargeable with Duty (Section 3)
- Adjudication of Stamp Duty
- Execution under Power-of-attorney
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including Websites / Video links)

REGULATORY FRAMEWORK

- Indian Contract Act, 1872
- Specific Relief Act of 1963
- Transfer of Property Act, 1882
- Registration Act, 1908
- Indian Stamp Act, 1899
- Powers-Of-Attorney Act, 1882

PART – A: INDIAN CONTRACT ACT, 1872

Indian Contract Act, 1872 governs the Law relating to Contracts. This Act was enacted to define and amend certain parts of the law relating to contracts. The act does not deal with the law of contract exclusively. It does not deal with all the branches of the law of contract exclusively.

The Act is divisible into two parts. The first part (Section 1-75) deals with the general principles of the law of contract, and therefore applies to all contracts irrespective of their nature. The second part (Sections 124-238) deals with certain special kinds of contracts, namely contracts of Indemnity and Guarantee, Bailment, Pledge, and Agency.

The preamble to the Act says that it is an Act “to define and amend certain parts of the law relating to contract”. The Act is by no means exhaustive on the law of contract. It does not deal with all the branches of the law of contract. Thus, contracts relating to partnership, sale of goods, negotiable instruments, insurance etc. are dealt with by separate Acts.

In order to understand, the critical aspects of Drafting and Conveyancing it is necessary to study the basic concepts relating to formation of contracts viz. Offers, Communication, acceptance and revocation of proposals, Essentials of Contracts and Contingent Contracts.

COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

Proposals

Proposal has been defined in section 2(a) of the Indian Contract Act, 1872, as under:

When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

A proposal is also known as an offer. An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for a promise, act or forbearance. The person making the proposal or offer is called the *proposer or offeror* and the person to whom the proposal is made is called the *offeree*.

Essentials of a proposal

1. There should be at least 2 persons.
2. One person should express his willingness to do or abstain from doing an Act or abstinence.
3. The purpose should be to obtain the assent of the other on the same thing.

If all the above three conditions are present, there is a valid proposal. However, the proposal should not be for any illegal act or abstinence.

Example: A send an email expressing his willingness to sell a Farm Land to B at a certain price.

A is the proposer, B is Offeree and the email send can be called a proposal or offer.

Kinds of Offers

There are generally 7 types of offers:

Types of Proposals

- Particular offer/Specific Offer
- General Offer
- Cross Offers
- Open/Continuing/Standing Offer
- Counter offer
- Contracts by Post/Email
- Contracts over the Telephone

Identify the Proposals

1. Akshar offers to sell his old motorcycle to Bineet at a price of Rs. 50,000/-. Bineet made an offer to purchase the same motorcycle at a price of Rs. 40,000/-. Identify the type of offer.
2. XYZ Limited issued *a tender to obtain services of Annual Maintenance of its Computer Systems for the year 2024. The services were required to be provided as and when the need arises. The tender was awarded to a partnership firm. There is no concluded contract. Contract will be concluded on placing of the order. Identify the type of offer.*
3. Rajan advertises in Newspaper that the 1st person who communicates that he is ready provide him 5000 units of mobile phones within 7 days of the advertisement, he will purchase all 5000 mobiles from him. Identify the type of offer.

Rules governing Offers

A valid offer must comply with the following rules:

(a) An offer must be clear, definite, complete and final. It must not be vague. For example, a promise to pay an increased price for a horse if it proves lucky to promisor, is too vague and is not binding.

(b) An offer must be communicated to the offeree. An offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the same.

(c) The communication of an offer may be made by express words-oral or written-or it may be implied by conduct.

(d) The communication of the offer may be general or specific. Where an offer is made to a specific person it is called specific offer and it can be accepted only by that person. But when an offer is addressed to an uncertain body of individuals i.e. the world at large, it is a general offer.

How an offer gets revoked?

How a Proposal or Offer be revoked?	by the communication of notice of revocation by the proposer to the other party
	by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance
	by the failure of the acceptor to fulfil a condition precedent to acceptance
	by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance

Offer and invitation to offer

Invitation to offer is a communication to invite certain person(s) or public for making offer. The same may be understood from below mentioned examples:

(a) *An invitation to treat or an invitation to make an offer:* e.g., an auctioneers request for bids (which are offered by the bidders), the display of goods in a shop window with prices marked upon them, or the display of priced goods in a self- service store or a shopkeepers catalogue of prices are invitations to an offer.

(b) *A mere statement of intention:* e.g., an announcement of a coming auction sale.

(c) *A mere communication of information in the course of negotiation:* e.g., a statement of the price at which one is prepared to consider negotiating the sale of piece of land.

An offer that has been communicated properly continues as such until it lapses, or until it is revoked by the offeror, or rejected or accepted by the offeree.

Communication

According to section 3 of the Indian Contract Act, 1872, the communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

Essentials of section 3

1. The purpose of section 3 is to provide the provision relating to four incidents:
    i) Communication of the Proposal,
    ii) Acceptance of the Proposal,
    iii) Revocation of the Proposal, and
    iv) Revocation of the Acceptance.
2. There must be an act or omission of the maker for acceptance and revocation.
3. The Act or Omission should intend to communicate such proposal, acceptance or revocation, or should have the effect of communicating it.

Completion of Communication

1. **Proposal:** The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made i.e. the offeree.

2. **Acceptance:** The acceptance completes for the Offeror and Offeree at different times.

   The communication of an acceptance is complete, –

   i) **As against the proposer,** when it is put in a course of transmission to him, so as to be out of the power of the acceptor.

   ii) **As against the acceptor**, when it comes to the knowledge of the proposer.

3. **Revocation:** The revocation also takes place for the Offeror and offeree at different times.

   The communication of a revocation is complete,—

   i) **As against the person who makes it**, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

   ii) **As against the person to whom it is made**, when it comes to his knowledge.

By When an acceptance or Proposal be revoked?

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor.

Example: Ankush send an email proposing to sell his factory to Baman. Baman accepted the proposal by a letter sent by post. Ankush may revoke his proposal at any time before or at the moment when Baman posts his letter of acceptance, but not afterwards. Baman may revoke his acceptance at any time before or at the moment when the letter communicating it reaches Ankush, but not afterwards.

Acceptance

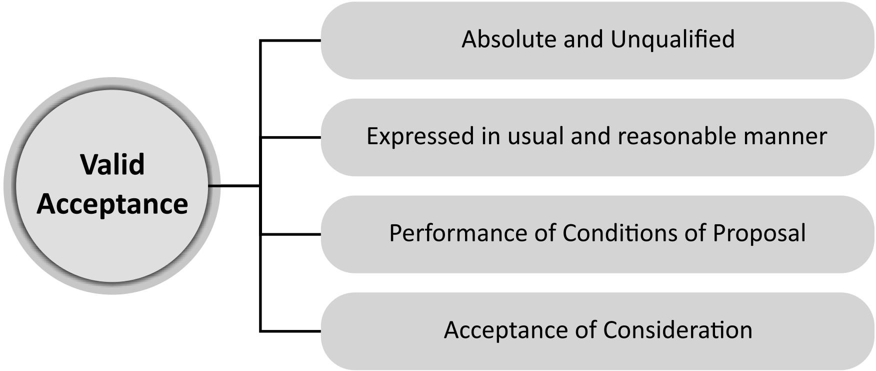
A proposal on acceptance becomes a promise. Every promise or set of promises forming consideration for each other become agreement. Therefore, special relevance should be given to acceptance. According to section 7 of Indian Contract Act, 1872, in order to convert a proposal into a promise, the acceptance must—

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

According to section 8 of Indian Contract Act, 1872, performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

The below clarify the rules relating to a valid acceptance:


Valid Acceptance
Absolute and Unqualified
Expressed in usual and reasonable manner
Performance of Conditions of Proposal
Acceptance of Consideration

ESSENTIALS OF CONTRACTS

According to section 10 of the Indian Contract Act, 1872, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Therefore, the essentials of valid contracts are:

1) Valid Agreement as per section 2(e) of Indian Contract Act, 1872
2) Free Consent of the parties
3) Competence of Parties
4) Valid Consideration
5) Lawful Object
6) Agreement not declared Void.

The process for reaching a valid agreement has already been discussed in this chapter. The other essentials are discussed hereunder:

Free Consent of the parties

Section 13 of the ICA defines the term “consent” as under:

Two or more persons are said to consent when they agree upon the same thing in the same sense.

Section 14 of the ICA defines free consent as under:

Consent is said to be free when it is not caused by—

(1) coercion, as defined in section 15, or
(2) undue influence, as defined in section 16, or
(3) fraud, as defined in section 17, or
(4) misrepresentation, as defined in section 18, or
(5) mistake, subject to the provisions of sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

Coercion, as defined in section 15

"Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Example

A threatens B to inflict grievous hurt to B'son if he does not enter into Contract for giving performance at A's restaurant. A has applied coercion for the purpose of entering into contract.

Undue influence, as defined in section 16

Section 16(1) of the ICA provides that a contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

Example

Ajith has given a loan of Rs. 10,00,000/- (Ten Lakh Rupees) to his son Binay, during his minority. When Binay attained majority, Ajith by misuse of parental influence took a bond from Binay for Rs. 1,00,00,000 (One Crore) than the sum due in respect of that Loan. Here, relations subsisting Ajith and Binay are such that one of the parties is in a position to dominate the will of the other. Therefore, Ajith employs undue influence.

Section 16(2) provides the situation in which it is deemed that one has dominated the will of other. It provides that in particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another:

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

Section 16(3) provides about the provisions relating to Burden of Proof of Undue Influence. It says, where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Example

Amantha, being in debt to Bikrant, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on Bikrant to prove that the contract was not induced by undue influence.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872, which is relating to Proof of good faith in transactions where one party is in relation of active confidence.

Fraud, as defined in section 17

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true; i.e. Suggestion of False Fact by the Believer.

(2) the active concealment of a fact by one having knowledge or belief of the fact; i.e. Active concealment by person having knowledge of belief.

(3) a promise made without any intention of performing it; i.e. False Promise.

(4) any other act fitted to deceive; i.e. deceptive Act.

(5) any such act or omission as the law specially declares to be fraudulent. i.e. Any other act or omission declared as fraud by any Law.

However, as per the explanation, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances are such that it is the duty of the person keeping silence to speak , or unless his silence is equivalent to speech.

Misrepresentation, as defined in section 18

Misrepresentation means and includes:

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

Mistake, subject to the provisions of sections 20, 21 and 22

Both the parties Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. It should be noted that an erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact.

A contract is not voidable because it was caused by a mistake as to any law in force in India; but a mistake as to a law not in force in India has the same effect as a mistake of fact.

Consequence of agreement being vitiated by Coercion, undue influence, fraud and misrepresentation

When consent is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

However, a party to a contract whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

If consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

Competence of Parties

Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

Accordingly, there may be three categories which are not competent to contract:

1. Persons who have not attained the majority
2. Person of Unsound Mind
3. Persons who are disqualified by any law.

Who has attained majority?

According to the Indian Majority Act, 1875, a minor is a person, male or female, who has not completed the age of 18 years. In case a guardian has been appointed to the minor or where the minor is under the guardianship of the Court of Wards, the person continues to be a minor until he completes his age of 21 years. According to the Indian Contract Act.

Who is person of sound mind?

A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

It should be noted that a person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind and a person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Who are disqualified by the Law?

The persons disqualified by Law includes as under:

1. ***Alien Enemies:*** A person who is not an Indian citizen is an alien. An alien may be either an alien friend or a foreigner whose sovereign or State is at peace with India, has usually contractual capacity of an Indian citizen. On the declaration of war between his country and India he becomes an alien enemy. A contract with an alien enemy becomes unenforceable on the outbreak of war.
2. ***Foreign Sovereigns and Ambassadors:*** Foreign sovereigns and accredited representatives of foreign states, i.e., Ambassadors, High Commissioners, enjoy a special privilege in that they cannot be sued in Indian Courts, unless they voluntarily submit to the jurisdiction of the Indian Courts. Foreign Sovereign Governments can enter into contracts through agents residing in India. In such cases the agent becomes personally responsible for the performance of the contracts.
3. Oudh Land Revenue Act provides that where a person in Oudh is declared as a ‘disqualified proprietor under the Act, he is incompetent to alienate his property.

Valid Consideration

According to Section 2(d) of ICA, consideration is: when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

Essentials of Considerations

1. Consideration should be at the desire of the person making promise. He may be the offeror or the Offeree.
2. The promisee or any other person on his/her behalf has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing an act or abstinence or promise. It is clear that the consideration may be Executory/Future or Executed /Present or Past Act/Forbearance.

It should be noted that in English law, consideration must move from the promisee, so that a stranger to the consideration cannot sue on the contract but according to Indian Laws consideration may move from stranger also.

CASE LAW

In ***Chinnaya* v. *Ramaya,* (1882) 4 Mad. 137**, a lady by a deed of gift made over certain property to her daughter directing her to pay an annuity to the donors brother as had been done by the donor herself before she gifted the property. On the same day, her daughter executed in writing in favour of the donors brother agreeing to pay the annuity. Afterwards the donee (the daughter) declined to fulfil her promise to pay her uncle saying that no consideration had moved from him. The Court, however, held that the uncle could sue even though no part of the consideration received by his niece moved from him. The consideration from her mother was sufficient consideration.

Privity of consideration

In India *privity* of consideration is not strictly applicable. It means that consideration may be paid by parties or any other person. The doctrine of *privity* of contract provides that a contract cannot confer rights or impose obligations upon any person who is not a party to the contract. It is applicable in India with certain exception like trust, covenant running with land, family settlements etc.

Rules Governing Consideration

(a) Every contract must be supported by valuable consideration otherwise it is formally void subject to some exceptions.

(b) Consideration may be by an act of abstinence or promise.

(c) There must be mutuality i.e., each party must do or agree to do something.

(d) Consideration must be real, and not vague, indefinite, or illusory, e.g., a son's promise to "stop being a nuisance" to his father, being vague, is no consideration.

(e) Although consideration must have some value, it need not be adequate.

(f) Consideration must be lawful.

If the consideration is unlawful, the agreement is void.

(g) Consideration must be something more than the promisee is already bound to do for the promisor. Thus, an agreement to perform an existing obligation made with the person to whom the obligation is already owed, is not made for consideration**.**

Exceptions to consideration

According to section 25 of ICA, an agreement made without consideration is void, unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Lawful Object

According to section 23 of ICA, the consideration or object of an agreement is lawful, unless:

1. it is forbidden by law; or
2. is of such a nature that if permitted, it would defeat the provisions of any law; or
3. is fraudulent; or
4. involves or implies injury to the person or property of another; or
5. the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful and every agreement of which the object or consideration is unlawful is void.

Example

Lawful Consideration

1. Anantha agrees to sell his Factory to Brajesh for 10,00,000/- rupees. Here Brajesh's promise to pay the sum of 10,00,000 rupees is the consideration for Anantha's promise to sell the house, and Anantha's promise to sell the factory is the consideration for Brajesh's promise to pay the 10,00,000 rupees. These are lawful considerations.

Unlawful Consideration

2. A, B and C enter into an agreement for the division among them of gains acquired, by them by fraud. The agreement is void, as its object is unlawful.

Agreement not declared Void

The following types of agreements are void under Indian Contract Act:

(a) Agreement by or with a minor or a person of unsound mind or a person disqualified to enter into a contract - Section 11.

(b) Agreement made under a mistake of fact, material to the agreement on the part of the both the parties - Section 20.

(c) An agreement of which the consideration or object is unlawful - Section 23.

(d) If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void - Section 24.

(e) An agreement made without consideration subject to three exceptions provided to Section 25.

(f) An agreement in restraint of marriage - Section 26.

(g) An agreement in restraint of trade - Section 27.

(h) An agreement in restraint of legal proceedings - Section 28.

(i) Agreements, the meaning of which is not certain, or capable of being made certain - Section 29.

(j) Agreement by way of wager- Section 30.

(k) An agreement to enter into an agreement in the future.

(l) An agreement to do an act impossible in itself - Section 56(1).

An agreement not enforceable by law is void *ab initio.*

CONTINGENT CONTRACTS

According to section 31 of ICA, a contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Example

Anantha contracts to pay Brajesh Rs. 2,00,000 if Brajesh's will construct a House within 1 month. This is a contingent contract.

Where there is a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen—such goods are known as contingent goods. Contingent goods fall in the class of future goods. A agrees to sell a certain TV set provided he is able to get it from its present owner. This is an agreement to sell contingent goods. In such a case, if the contingency does not happen for no fault of the seller, he will not be liable for damages.

Actual sale can take place only of specific goods and property in goods passes from the seller to buyer at the time of the contract, provided the goods are in a deliverable state and the contract is unconditional. There can be an agreement to sell only in respect of future or contingent goods.

PART – B: SPECIFIC RELIEF ACT, 1963

The law relating to specific relief in India is provided in the Specific Relief Act of 1963. The expression 'specific relief' means a relief in specie. In this lesson, relevant part of specific relief act dealing with enforcement of contracts has been covered.

SPECIFIC RELIEFS

Recovery of specific immovable property

According to section 5 of Specific Relief Act, 1963(SRA), a person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908. Therefore, a civil suit may be filled by a party for recovering the possession of Immovable Property.

Section 6 provides the provisions related to suit by person dispossessed of immovable property. It says that if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person through whom he has been in possession or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

However, no suit under section 6 should be brought:

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

Appeal or review is not allowed from any order or decree passed in any suit instituted under section 6.

However, suit to establish his title to such property and to recover possession thereof is not barred.

Recovery of specific movable property

According to section 7 of SRA, a person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908. The provision is similar to section of SRA which provides for the provision for Recovery of specific immovable property. However, two explanation to the main provision has been provided as under:

Explanation 1. – A trustee may sue under section 7 for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2. – A special or temporary right to the present possession of movable property is sufficient to support a suit under section 7.

Further, section 8 of SRA provides for the Liability of person in possession, not as owner, to deliver to persons entitled to immediate possession.

It provides that any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases: –

(a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;

(b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

Explanation. – Unless and until the contrary is proved, the court shall, in respect of any article of movable property claimed under clause (b) or clause (c) of this section, presume—

(a) that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or,

(b) that it would be extremely difficult to ascertain the actual damage caused by its loss.

Specific Performance of Contracts

Except as otherwise provided in SRA where any relief is claimed under Chapter II of Part II of SRA in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts.

The specific performance of a contract are enforceable by the court subject to the provisions contained in section 11(2), section 14 and section 16.

Except as otherwise provided in SRA, specific performance of a contract is enforceable when the act agreed to be done is in the performance wholly or partly of a trust.

Further section 11(2) provides that a contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

The court may direct the specific performance of a part of a contract only as per the provisions provided under section 12 of SRA which are as follows:

1. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed be a only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

2. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—

   (a) forms a considerable part of the whole, though admitting of compensation in money; or

   (b) does not admit of compensation in money;

   he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—

   (i) in a case falling under clause

      (a) pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause;

      (b) pays or has paid the consideration for the whole of the contract without any abatement; and

   (ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

3. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

   Explanation. – For the purposes section 12, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject-matter existing at the date of the contract has ceased to exist at the time of its performance.

Example

X and Y entered into the contract in which X will provide 500 printers to Y. X had to shut down his manufacturing unit due to the local conditions out of his control. X has only 475 printers in his warehouse.

X or Y may file a civil suit and the court may direct to deliver 475 printers and award compensation.

Rights of purchaser or lessee against person with no title or imperfect title

Section 13 of SRA enumerates the Rights of purchaser or lessee as under:

Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of Chapter II of Part II), has the following rights, namely:

(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other person is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lesser in the property which is the subject-matter of the contract.

These provisions are also applicable to contracts for the sale or hire of movable property.

Contracts not specifically enforceable

According to section 14, the following contracts cannot be specifically enforced, namely:

(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;

(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;

(c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and

(d) a contract which is in its nature determinable.

Example

X and Y entered into a contract in which Y will work in the restaurant of X as marketing manager and expand the restaurant business. In this scenario, the court cannot supervise continuously. Therefore, this contract may be covered within the purview of section 14.

Who may obtain specific performance

Section 15 provides the provisions relating to the persons who may obtain specific performance. It provides that except as otherwise provided by Chapter II of Part II, the specific performance of a contract may be obtained by:

(a) any party thereto;

(b) the representative in interest or the principal, of any party thereto:

Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(fa) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.

(g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

Non availability of Specific performance of a contract in favour of certain persons

Specific performance of a contract cannot be enforced in favour of a person—

(a) who has obtained substituted performance of contract under section 20; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation. – For the purposes of clause (c),–

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must prove performance of, or readiness and willingness to perform, the contract according to its true construction.

Contract to sell or let property by one who has no title, not specifically enforceable (Section 17)

A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor:

i) who, knowing himself not to have any title to the property, has contracted to sell or let the property;

ii) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

The provisions above are also applicable to contracts for the sale or hire of movable property to the possible extent.

Non-enforcement except with variation (Section 18)

Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases, namely:

(a) where by fraud, mistake of fact or mis-representation, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contact;

(b) where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce;

(c) where the parties have, subsequently to the execution of the contract, varied its terms.

Relief against parties and persons claiming under them by subsequent title (Section 19)

Except as otherwise provided by Chapter II of Part II, specific performance of a contract may be enforced against –

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation;

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

Substituted performance of contracts, etc.

Without prejudice to the generality of the provisions contained in the Indian Contract Act, 1872, and, except as otherwise agreed upon by the parties, where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.

No substituted performance of contract under section 20(1) of SRA shall be undertaken unless the party who suffers such breach has given a notice in writing, of not less than thirty days, to the party in breach calling upon him to perform the contract within such time as specified in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency.

However, the party who suffers such breach shall not be entitled to recover the expenses and costs under section 20(1) unless he has got the contract performed through a third party or by his own agency.

Where the party suffering breach of contract has got the contract performed through a third party or by his own agency after giving notice under section 20(1), he shall not be entitled to claim relief of specific performance against the party in breach.

Nothing in section 20 shall prevent the party who has suffered breach of contract from claiming compensation from the party in breach.

According to section 20A(1) of SRA, no injunction shall be granted by a court in a suit under SRA involving a contract relating to an infrastructure project specified in the Schedule to the Act, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

Power to award compensation in certain cases (Section 21)

In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach in addition to such performance.

If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

In determining the amount of any compensation awarded under section 21, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872.

No compensation shall be awarded under section 21 unless the plaintiff has claimed such compensation in his plaint. Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Power to grant relief for possession, partition, refund of earnest money, etc. (Section 22)

Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for –

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

No relief under clause (a) or clause (b) above be granted by the court unless it has been specifically claimed:

Provident that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

The power of the court to grant relief under clause (b) above shall be without prejudice to its powers to award compensation under section 21.

Liquidation of damages not a bar to specific performance (Section 23)

A contract, otherwise proper to be specifically enforced, may be so enforced, though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same, if the court, having regard to the terms of the contract and other attending circumstances, is satisfied that the sum was named only for the purpose of securing performance of the contract and not for the purpose of giving to the party in default an option of paying money in lieu of specific performance.

When enforcing specific performance under this section, the court shall not also decree payment of the sum so named in the contract.

Bar of suit for compensation for breach after dismissal of suit for specific performance (Section 24)

The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, but shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.

DECLARATORY DECREES (SECTION 34 & 35)

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

However, no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation. – A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not inexistence, and for whom, if in existence, he would be a trustee.

A declaration made under Chapter VI of Part II is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

PART C: TRANSFER OF PROPERTY ACT, 1882

The Transfer of Property Act, 1882 (TPA) comprises the provisions relating to transfer of property. This law was enacted with the object to *amend the law relating to the transfer of property by act of parties.* The law excludes the transfers by operation of law, i.e. by sale in execution, forfeiture, insolvency or intestate succession. The Act is limited to transfers *inter vivos* and excludes testamentary succession, i.e. transfers *by will. The substantial portions of contracts in any organisation relate to the Transfer of Property. Therefore, the study of relevant part of this law is imperative for upskilling of a professional in contract drafting.*

SALE

Section 54 of TPA defines the term Sale. According to this section, it is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. In order a document be treated as Sale Document, ownership must be transferred from one person to the other person and the transaction must be supported by a considerations paid or promised or partly paid and partly promised.

How sale is effected?

Transfer of Property Act, 1882 primarily deals with the transfer of immoveable property. A transfer of property may be effected in two ways according to section 54 i.e. when the value of the property is equal to more than 100 rupees and where the value of the property is less than 100 rupees.

Value of the Property equal to and more than 100 rupees: Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. The first essential is that the property must be tangible immoveable property and value of property should be equal to or exceed 100 rupees. If both the conditions are satisfied than transfer should be by way of registered instrument only.

Value of the property is less than 100 rupees: In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. If the value is less than 100 rupees than it is dependent on the parties to decide to mode of transfer either by way of registered instrument or mere delivery.

Further, Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he(buyer) directs, in possession of the property.

Contract for sale: A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.

MORTGAGE

Chapter IV of the Transfer of Property Act, 1882 deals with the provisions relating to Mortgages of Immoveable Property and Charges. Section 58 defines certain terms such as “Mortgage”, “mortgagor”, “mortgagee”, “mortgage-money” and “mortgage-deed”.

A mortgage is defined as the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

The rights and liabilities of mortgagor and mortagee are also mentioned in the Transfer of Property Act, 1882.

Types of the Mortgages

1. **Simple mortgage**: Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

2. **Mortgage by conditional sale**: Where the mortgagor ostensibly sells the mortgaged property on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

   However, no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.

3. **Usufructuary mortgage**: Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

4. **English mortgage**: Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

5. **Mortgage by deposit of title-deeds:** Where a person in any of the following towns, namely, the towns of Calcutta, Madras and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

6. **Anomalous mortgage**: A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds is called an anomalous mortgage.

LEASE & LICENCES

A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee.

Difference between Lease and licence

A lease should be distinguished from a licence. A licence is a right to do or continue to do in or upon the immoveable property of the grantor, something which would, in the absence of such a right, be unlawful.

A licence does not transfer any interest in the property and the licencee has no right to possession. A licence can be revoked by the grantor at any time, whereas a lease cannot be revoked. If, I sell the fruits of my garden to you, you are given permission or licence to enter my garden and take away the fruits. A lease involves a transfer of interest followed by possession of the property for a specified period. The real test is the intention of the parties.

If the document creates an interest in the property, it is a lease but if it only permits another to make use of the property of which the legal possession continues with the owner, it is a licence because it does not create any interest in that property [*Associated Hotel of India v. R.N. Kapoor, A.I.R. (1956) S.C. 1962]*.

The question is not of words but of substance and the label which the parties choose to put upon the transaction though relevant is not decisive.

GIFT

"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Such acceptance must be made during the lifetime of the donor and while he is till capable of giving, If the donee dies before acceptance, the gift is void.

For a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. A gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

A gift comprising both existing and future property is void as to the latter.

A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

The donor and done may agree that on the happening of any specified event which does not depend on the will of the donor a it shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere well of the donor is void wholly or in part, as the case may be.

A gift also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked. Nothing contained in section 126 shall be deemed to affect the rights of transferees for consideration without notice.

Onerous Gifts

Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the done can take nothing by the gift unless he accepts it fully. Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the done is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Actionable Claims

The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent. It shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not.

However, every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

However, nothing in the sections 130 to 136 of Transfer of Property Act, 1882, applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

PART D: REGISTRATION ACT, 1908

Registration means recording of the contents of a document with a Registering Officer and preservation of its copies. The Registration Act, 1908 was enacted with the purpose of ensuring registration of documents related to deals regarding land or other immovable or moveable property. A document which is registered becomes more authentic and trustable. The registration is of a document and not of a transaction. Therefore, this law is an important enactment for the purpose of drafting and conveyancing.

COMPULSORY AND OPTIONAL REGISTRATION OF DOCUMENTS

Documents of which registration is compulsory (Section 17)

The following documents shall be registered compulsorily:

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 relating to Doctrine of Part Performance shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

Exemptions from section 17

The registration of the non-testamentary documents mentioned in clauses (b) and (c) of Section 17(1) is subject to the exceptions provided in Section 17(2). These are as follows:

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) any document other than the documents specified in sub-section 17(1A) not itself creating declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by Government; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

(xa) any order made under the Charitable Endowments Act, 1890, vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

Example

X and Y executed and signed a Lease Deed for 5 Years. The lease deed is compulsorily registrable.

Documents of which registration is optional (Section 18)

The following documents are optionally registered under the Registration Act, 1908, namely:–

(a) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less then one hundred rupees, to or in immovable property;

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(c) leases of immovable property for any term not exceeding one year, and leases exempted under section 17;

(cc) instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;

(e) wills; and

(f) all other documents not required by section 17 to be registered.

TIME AND PLACE OF REGISTRATION

Subject to the provisions contained in sections 24, 25 and 26 of the Registration Act, 1908, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution. However, a copy a of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

Notwithstanding anything to the contrary contained in Registration Act, if a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as if it has not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefore under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration; and such document, if duly re-registered in accordance with the provisions of section 23A, shall be deemed to have been duly registered for all purposes from the date of its original registration:

However, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with section 23A, whatever may have been the time when he first became aware that the registration of the document was invalid.

Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

However, if, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration. Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

When a document purporting to have been executed by all or any of the parties out of India is not presented for registration till after the expiration of the prescribed time, the registering officer, if satisfied:

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in India, may, on payment of the proper registration-fee accept such document for registration.

A WILL may at any time be presented for registration or deposited.

Place of Registration

According to section 28, save as in Part V otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c) (d) and (e), section 17, sub-section (2), insofar as such document affects immovable property, and section 18, clauses (a), (b) (c) and (cc), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Every document not being a document referred to in section 28 or a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the State Government at which all the persons executing and claiming under the document desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immovable property, in the office of any other Sub-Registrar under the State Government at which all the persons claiming under the decree or order desire the copy to be registered.

Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

In ordinary cases the registration or deposit of documents under Registration Act shall be made only at the office of the officer authorised to accept the same for registration or deposit. However, such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

EFFECTS OF REGISTRATION AND NON-REGISTRATION OF DOCUMENTS

No document required by section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall:

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

However, an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument.

Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

CASE STUDY

XYZ Pvt. Ltd and DEF Co. LLP have entered into a contract of sale of plant and machinery. The Managing Director of the XYZ Pvt. Ltd. signed the contract in Mumbai and send the same to the office of DEF Co. LLP in Delhi and its partner has signed the document. The consideration for the transaction is Rs. 50 Crore. A dispute arose between the parties over the identification of this property. Identify the following.

1. Whether the registration of this contract is compulsory.
2. Where the contract can be registered?
3. What is the time period for getting the contract registered?
4. What is effect of non-registration of this document?

PART E: INDIAN STAMP ACT, 1899

The Indian Stamp Act, 1899 is the law relating to stamps which consolidates and amends the law relating to stamp duty. It is a fiscal legislation envisaging levy of stamp duty on certain instruments. Therefore, this law is complementary in Laws relating to Drafting and Conveyancing.

INSTRUMENTS CHARGEABLE WITH DUTY (SECTION 3)

Subject to the provisions of Indian Stamp Act, 1899 and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore respectively, that is to say:

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;

(b) every bill of exchange 2 payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and

(c) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:

Provided that no duty shall be chargeable in respect of –

(1) any instrument executed by, or on behalf of, or in favour of, the Government incases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act 1894, Act No. 57 & 58 Vict. c. 60 or under Act XIX of 1838 Act No. or the Indian Registration of Ships Act, 1841, (CX of 1841) as amended by subsequent Acts.

Several instruments used in single transaction of sale, mortgage or settlement (Section 4)

(1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that Schedule.

(2) The parties may determine for themselves which of the instrument so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument. However, the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

(3) Notwithstanding anything contained in sub-sections (1) and (2), in the case of any issue, sale or transfer of securities, the instrument on which stamp-duty is chargeable under section 9A shall be the principal instrument for the purpose of this section and no stamp-duty shall be charged on any other instruments relating to any such transaction.

Instruments relating to several distinct matters (Section 5)

Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under Indian Stamp Act, 1899.

Instruments coming within several descriptions in Schedule I (Section 6)

Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties. However, nothing in Indian Stamp Act contained can render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

ADJUDICATION OF STAMP DUTY

Adjudication as to proper stamp.(Section 31)

(1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than fifty naye paise) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Provided that –

(a) no evidence furnished in pursuance of section 31 shall be used against any person in any civil proceeding, except in an inquiry as to the duty with which the instrument to which it relates is chargeable; and

(b) every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

Certificate by Collector (Section 32)

(1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped.

However, nothing in this section authorizes the Collector to endorse—

(a) any instrument executed or first executed in India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;

(b) any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in India; or

(c) any instrument chargeable with a duty not exceeding ten nayepaise, or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped.

Instruments not duly stamped inadmissible in evidence, etc. (Section 35)

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

Provided that –

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898;

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

Admission of instrument where not to be questioned (Section 36)

Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Admission of improperly stamped instruments (Section 37)

The State Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

Revision of certain decisions of Courts regarding the sufficiency of stamps (Section 61)

(1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1898), makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument.

Provided that:

(a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;

(b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.

Payment of Stamp Duty

Duties how to be paid

(1) Except as otherwise expressly provided in Indian Stamp Act, 1899, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps:

(a) according to the provisions herein contained; or

(b) when no such provision is applicable thereto – as the State Government may be rule direct.

(2) The rules made under sub-section (1) may, among other matters, regulate,–

(a) in the case of each kind of instrument – the description of stamps which may be used;

(b) in the case of instruments stamped with impressed stamps – the number of stamps which may be used;

(c) in the case of bills of exchange or promissory notes the size of the paper on which they are written.

The practical aspects with regard to the calculation and payment of stamp duty can be referred to from Paper 1: jurisprudence, interpretation & General Laws of Executive Programme.

Use of adhesive stamps (Section 11)

The following instruments can be stamped with adhesive stamps, namely:

(a) instruments chargeable with a duty not exceeding ten naye paise, except parts of bills of exchange payable otherwise than on demand and drawn in sets;

(b) bills of exchange, and promissory notes drawn or made out of India;

(c) entry as an advocate, vakil or attorney on the roll of a High Court;

(d) notarial acts; and

(e) transfers by endorsement of shares in any incorporated company or other body corporate.

How transfer in consideration of debt, or subject to future payment, etc., to be charged(Section 24)

Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty.

However, nothing in section 24 apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

PART F: THE POWERS-OF-ATTORNEY ACT, 1882

The Powers-of-Attorney Act is a longstanding enactment dated back in 1882. In the originally enacted legislation, there was no express definition of power-of-attorney. This definition has been inserted as section 1A by Act 55 of 1982 and was retrospectively made applicable w.e.f. 22nd October, 1980. As per the definition, it includes any instrument empowering a specified person to act for and in the name of the person executing it. A Company is not a human being, it has to act through human beings. It is considered as a legal person which can enter into contracts, possess properties in its own name, sue and can be sued by others etc. Due to this, companies are required to execute power of attorney for various purposes. Not only companies, other form of entities and individuals are also required to execute power of attorney for various purposes such as in case of agencies, legal representation etc.

EXECUTION UNDER POWER-OF-ATTORNEY

The person assigning the authority is called donor and the in whose favour the power-of-attorney has been made is called the donee. The donee of a power-of-attorney can execute any instrument or do anything in and with his own name and signature, and his own seal, wherever required by the authority of the donor of the power. Every instrument and thing so executed and done is as effectual in law as if it had been executed or done by the donee in the name and with the signature and seal of the donor thereof.

The Act provides for the protection of action taken by donee in good faith. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney cannot be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become of unsound mind, or insolvent, or had revoked the power, if the fact of death, unsoundness of mind, insolvency or revocation was not, at the time of the payment or act, known to the person making or doing the same. However, this does not affect any right against the "payee of any person" i.e. receiver, interested in any money so paid. That person has the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

Procedure for Deposit of original instruments creating Powers-of-Attorney provided under section 4

The procedure for Deposit of original Powers-of-Attorney is provided under Section 4 of the Powers-of-Attorney Act, 1882. It provides that:

(a) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court or District Court within the local limits of whose jurisdiction the instrument may be.

(b) A separate file of instruments so deposited shall be kept; and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.

(c) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court or District Court.

(e) The High Court may, from time to time, make rules for the purposes of section 4, and prescribing, with the concurrence of the State Government, the fees to be taken under clauses (a), (b) and (c).

Power-of-attorney of married women

According to section 5, a married woman of full age shall, by virtue of Powers-of-Attorney Act, have power, as if she were unmarried, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do.

Example

Delegation of powers through a power of attorney is resorted to in view of the fact that it will be very easy to prove the execution thereof. In the case of a resolution, it would be necessary to produce the Minutes Books, etc., to prove the passing of the resolution of delegation of the powers. Further, under Section 22 of the Companies Act, 2013, a company may, by writing under its Common Seal if any, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place either in India or outside India.

LESSON ROUND-UP

- Indian Contract Act, 1872 governs the Law relating to Contracts. This Act was enacted to define and amend certain parts of the law relating to contracts. The act does not deal with the law of contract exclusively. It does not deal with all the branches of the law of contract exclusively.
- Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.
- The law relating to specific relief in India is provided in the Specific Relief Act of 1963. The expression 'specific relief' means a relief in specie.
- Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up.
- Without prejudice to the generality of the provisions contained in the Indian Contract Act, 1872, and, except as otherwise agreed upon by the parties, where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.
- The Transfer of Property Act, 1882 (TPA) comprises the provisions relating to transfer of property. This law was enacted with the object to *amend the law relating to the transfer of property by act of parties.* The law excludes the transfers by operation of law, i.e. by sale in execution, forfeiture, insolvency or intestate succession.
- The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent.
- Registration means recording of the contents of a document with a Registering Officer and preservation of its copies. The Registration Act, 1908 was enacted with the purpose of ensuring registration of documents related to deals regarding land or other immovable or moveable property.
- Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.
- The Powers-of-Attorney Act is a longstanding enactment dated back in 1882. In the originally enacted legislation, there was no express definition of power-of-attorney. This definition has been inserted as section 1A by Act 55 of 1982 and was retrospectively made applicable w.e.f. 22nd October, 1980.

GLOSSARY

Agreement : Every promise and every set of promises, forming the consideration for each other.

Contract : An agreement enforceable by law.

Obligation : Includes every duty enforceable by law.

Gift : It is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Immovable Property : It includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. Write a note on essential elements to be considered before entering into a Lease Deed.
2. Explain the consequence of non-registration of compulsorily registrable instrument.
3. XYZ Limited intends to enter into Agreement to Sell. The company is not aware of the amount of stamp duty that is required to be paid. Advice the company the provisions relating to adjudication.
4. Can a contract to perform at an event be enforced? Explain with the help of relevant provisions.
5. Power of Attorney is an important instrument for any company. Comment.
6. Explain the type of mortgages.
7. Enumerate the essential elements for entering into a valid contract.
8. What is the importance of Declaratory Decrees? Explain.

LIST OF FURTHER READINGS

- Bare Act of Indian Contract Act, 1872
- Bare Act of Specific Relief Act, 1963
- Bare Act of Transfer of Property Act, 1882
- Bare Act of Registration Act, 1908
- Bare Act of Indian Stamp Act, 1899
- Bare Act of Powers-of-attorney Act, 1882
- The Indian Contract & Specific Relief Acts (Set of 2 Volumes) (2017)- Pollock and Sir Dinshaw Fardunji Mulla
- Specific Relief Act by R K Bangia
- The Indian Stamp Act. by K Krishnamurthy.
- The Transfer of Property Act, 1882 with Exhaustive Case Law- Universal's Concise Commentary
- Articles by the professionals and Firms

OTHER REFERENCES (Including Websites / Video Links)

- https://www.indiacode.nic.in/bitstream/123456789/2190/5/A1908-16.pdf
- https://www.indiacode.nic.in/bitstream/123456789/2338/1/A1882-04.pdf
- https://www.indiacode.nic.in/bitstream/123456789/1583/7/A1963-47.pdf
- https://www.indiacode.nic.in/bitstream/123456789/2187/2/A187209.pdf
- https://www.indiacode.nic.in/bitstream/123456789/2338/1/A1882-04.pdf
- https://www.indiacode.nic.in/bitstream/123456789/15510/1/a1899-2%20.pdf

Drafting of Agreements, Deeds and Documents

Lesson 4

KEY CONCEPTS

■ Business Agreements ■ Alternate Dispute Resolution Clauses/Agreements ■ General Power of Attorney ■ Special Power of Attorney ■ Leave and Licence Agreements ■ Sale Deed and Agreement to Sell ■ Gift Deed

Learning Objectives

To understand:

- Essentials of Drafting of documents
- Types of Agreements / Contracts
- Drafting of Lease Deed & License Deed
- Purpose and drafting of Mortgage Deed
- Basics of Gift Deed and its drafting
- Alternate Dispute Resolution (ADR) Agreements
- Drafting of Bye-Laws of Societies
- Drafting of Standing Orders
- Response of Show Cause Notices
- The Strategies to Improve Drafting of Legal Documents

Lesson Outline

- Introduction
- Document – Meaning
- How to draft a Document?
- Types of Agreements / Contracts
- Deeds of Power of Attorney i.e. General Power of Attorney and Special Power of Attorney
- Special Power of Attorney
- Lease Deed & License Deed
- Mortgage Deeds
- Gift Deed
- Sale Deed and Agreement to Sell
- Alternate Dispute Resolution (ADR) Agreements
- Employment Contracts
- Settlement Agreements
- Drafting of bye-laws of Societies
- Drafting of Standing Orders
- Reply of Show Cause Notices
- Notices under the Negotiable Instruments Act
- Tips to Improve Drafting of Legal Documents
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites / video link)

REGULATORY FRAMEWORK

- Indian Evidence Act, 1872
- General Clauses Act, 1897
- Indian Contract Act, 1872
- Powers-Of-Attorney Act, 1882
- Income-tax Act, 1961
- Transfer of Property Act, 1882
- Limitation Act, 1963
- Registration Act, 1908
- Arbitration and Conciliation Act, 1996
- Negotiable Instruments Act, 1881

INTRODUCTION

The skill of drafting is one's ability to express one's thought process in writing. Probably no other profession demands this ability more than the legal profession. A document is a voice of a sender. Every written word in a legal profession is precious, as it has the power to advocate, inform, instruct and persuade. Practically speaking, the language and tone of every commercial agreement must be clear and unambiguous. An agreement is not drafted for the academic pleasure of its author. An agreement is a living thing (almost) – it has to live and face the scrutiny of several interested parties (the client, other party, other party's lawyers, adjudicating authorities, etc.). Therefore, it has to be carefully crafted so as to protect your client's interest to the utmost, be legally compliant and understandable to all who come across the document.

Writing skills play a major role in the drafting of commercial agreements – negotiating skills are no less important but if you articulate and draft well, it leaves less scope for the other party to come up with any objections or counter your position. You can't take anything lightly as the contents of an agreement are legally binding between the parties.

Though, contracts, deeds etc. can be written, oral, or implied also. However, it is always preferable to enter into written contracts as it is always difficult to prove the terms of an oral or implied contract than those of a written one. Some of the benefits of having a written contract are:

- The process of writing down the contract's terms and signing the contract forces both parties to think about and be precise about the obligations they are undertaking. With an oral contract, it is too easy for both parties to say "yes" and then have second thoughts.
- With an oral contract, the parties may have different recollections of what they agreed on (just as two witnesses to a car accident will disagree over what happened).
- A written agreement eliminates disputes over who promised what.
- Some types of contracts must be in writing to be enforced. The Copyright Act, 1957 requires a copyright assignment or exclusive license to be in writing.
- If you have to go to court to enforce a contract or get damages, a written contract will mean less dispute about the contract's terms as the burden of proof lies with you.

In this lesson, an attempt has been made to explain and make students understand the drafting of various types of Agreements, Deeds and Documents.

Points to be kept in mind while drafting agreements

- Prepare an outline.

- Establish a single principle of division and use that principle to divide the subject matter into major topics.
- Arrange the items in a logic sequence.
- Give appropriate headings.
- Remember the audience in mind when drafting a document.
- The text should be in clear writing.
- Use concrete words and be concise.
- Avoid gender-specific words as far as possible.
- Write in short sentences.
- Use proper punctuations.
- Avoid drafting in the passive voice and use active voice as it is more direct and vigorous than the passive voice.
- As far as possible put statements in a positive form and make definite assertions.
- Avoid unnecessary, hesitating and non-committal language.
- Express co-ordinate ideas in similar form.
- Keep related words together as the position of words in a sentence is the principal means of showing their relationship.
- In summaries, keep to one tense, especially the present tense.
- The emphatic words of a sentence should be placed at the end.

DOCUMENT - MEANING

Ordinarily the word “document” denotes a textual record. Increasingly sophisticated attempts to provide access to the rapidly growing quantity of available documents raised questions about which should be considered a “document”.

Three Acts refer to the word “Document” in very similar terms:

1. Section 3 of the Indian Evidence Act, 1872 states that a “Document” means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used or which may be used, for the purpose of recording that matter.
   - A writing is a document;
   - Words printed, lithographed or photographed are document;
   - A map or plan is a document;
   - An inscription on a metal plate or stone is a document;
   - A caricature is a document.
2. Section 3(18) of the General Clauses Act, 1897, states that a “Document” shall include any matter written, expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, which is intended to be used or which may be used for the purpose of recording that matter.
3. Section 29 of the Indian Penal Code, 1860, “The word ‘Document’ denotes any matter expressed or described upon any substance by means of letters, figures, or marks or by more than one of those means, intended to be used or which may be used as evidence of that matter”.

Thus the word “Document” has been used in a wide sense and it includes instruments, deeds, agreements etc. Documents will also include Electronic records.

HOW TO DRAFT A DOCUMENT?

A legal document is basically an enumeration of the transaction and all terms and conditions agreed to between the parties involved.

The following ten easy and important steps can be followed for drafting a document:

1. Ascertain a proper title of the document, which aptly describes the nature of transaction in brief.
2. Ascertain the parties to the transaction/agreement or the persons executing the document representing the parties. The particulars of identity like father’s/husband’s name, residential/official address, age, date of incorporation in case of company etc. should also be mentioned.
3. Note down the transaction/agreement and the consideration involved.
4. State the mode and manner of payment of consideration.
5. Note down the various terms and conditions of the agreement. These terms actually state the rights and liabilities of each party under the agreement. These terms should be drafted in very clear and precise language. The words used should be unambiguous so that only one meaning/interpretation is possible. It should be ensured that no condition is left out.
6. At the end, the document should bear signatures and stamp/seal where necessary of the executing parties. The date and place of execution should also be mentioned.
7. Some documents also require to be witnessed by some independent person who is not party to the document.
8. Where a document is required to be executed on stamp paper, then the stamp paper should be of prescribed value as applicable in the concerned state.
9. If a document is required to be registered, it should be presented for registration before the appropriate authority, within a reasonable time after execution.
10. Necessary number of copies of the document should also be prepared on stamp paper of appropriate value, if so required.

TYPES OF AGREEMENTS / CONTRACTS

A list of various agreements / contracts are enumerated hereunder –

1. **Business Agreements**
    i. Acquisition Agreement
    ii. Agency Agreement
    iii. Advertising Agreements
    iv. Consultancy Agreement
    v. Construction Agreement
    vi. Distribution Agreement
    vii. Franchisee Agreement
    viii. Foreign Collaboration Agreement
    ix. Hire Purchase Agreement
    x. Investment Agreement

xi. Joint Venture Agreement
xii. Service Agreement
xiii. Shareholder Agreement
xiv. Stock Purchase Agreement
xv. Sale Agreement
xvi. Technology Sharing Agreement
xvii. Agreement to act as technical or management adviser
xviii. Agreement to supply technical know-how
xix. Technical collaboration agreement
xx. Agreement between manufacturer and sole selling agents
xxi. Appointment of sole selling agents by a foreign company
xxii. Agreement for underwriting shares of a company
xxiii. Agreement to Underwrite Debenture Stock
xxiv. Agreement between a company and its manager
xxv. Agreement between a company and security service company for providing security services to the company's property
xxvi. Brokerage agreement
xxvii. Agreement Between A Firm and A Broker for Agency
xxviii. Agreement Between Manufacturer and Commission Agent
xxix. Dealership Agreements
xxx. Deed of indemnity by the partner retaining assets and liabilities to a partner on the dissolution of the partnership firm
xxxi. Indemnity for Loss of Allotment Letter
xxxii. Indemnity by Debtor to his Guarantor.

2. **Documents for formation of an Entity**
   i. Memorandum of Association & Articles of Association
   ii. Partnership Deed
   iii. LLP Incorporation document and LLP Agreement
   iv. Trust Deed
   v. Conversion of Partnership into Limited company
   vi. Association of Persons agreement
   vii. Section 8 company - Memorandum and Articles of Association
   viii. Memorandum of Association and Rules and Regulations of Society.
3. **Alternate Dispute Resolution**
   i. Agreement of reference to sole arbitrator
   ii. Agreement of reference to common arbitrator
   iii. Model Arbitration Clauses in an Agreement
   iv. Model Conciliation clauses

v. Model Mediation clauses

vi. Mediation Agreement

vii. Appointment of Sole Arbitrator on Default of Other Party

viii. Agreement For Reference To Arbitration Between Partners.

4. Property related documents

i. Purchase of Flat/house/apartment (commercial/residential)

ii. Purchase of Land

iii. Leave and Licence Agreement

iv. Licence authorizing the licensee to use the part of land of the licensor as way to the house of the licensee

v. Development Agreement

vi. Transfer Deed

vii. Power of Attorney

viii. Lease of building or office

ix. Lease of agricultural land

x. Lease of a furnished house for residential purposes

xi. Deed of surrender of lease

xii. Deed of renewal of lease

xiii. Tripartite lease agreement between lessor, lessee and the guarantor

xiv. Deed of Sub-Lease

xv. Deed for Modification of the Terms of the Lease

xvi. Gift Deed of Property

xvii. Partition Deed

xviii. Settlement Deed

xix. Construction Agreement

xx. Rent Agreement

xxi. Sale/ Purchase Agreement

xxii. Agreement to Sell

xxiii. Deed of Mortgage of Property

xxiv. Relinquishment Deed

xxv. Surrender Deed in Cooperative Housing Society

xxvi. Simple Mortgage Deed

xxvii. Conveyance Deed

xxviii. Deed of Mortgage by Conditional Sale

xxix. Mortgage by deposit of Title deeds

xxx. Deed Creating Charge on the Property.

5. **Intellectual Property Documents**
   - i. Patent and High Technology Agreements
   - ii. Licensing Agreements
   - iii. Consulting and Know-How Agreements
   - iv. Joint Development Agreements
   - v. Software Development Agreements
   - vi. Agreement for Sale of Technical Know-How
   - vii. License of use of copy right
   - viii. Agreements relating to protection of designs/ trademarks/ patents/ and know how
   - ix. Agreement for use of Trade Mark.
6. **Documents relating to Cyber Law**
   - i. Software Services Agreement
   - ii. Internet services agreement
   - iii. Privacy Policy and User Agreement
   - iv. Software Escrow Agreement
   - v. Website Development Agreement
   - vi. Internet Gateway Merchant Legal Agreement
   - vii. Technology related contracts.
7. **Banking / Financial Documents**
   - i. Loan Agreements
   - ii. Bank Guarantee
   - iii. Promissory Note
   - iv. Letter of Credit & Reimbursement Agreement
   - v. Indemnity given to Bank for Issue of a Duplicate Bank Draft
   - vi. Indemnity given to the bank by the natural guardian of minor children
   - vii. Indemnity for Loss of Deposit Receipt .
8. **Documents related to Labour and Employment**
   - i. Employment agreements
   - ii. Non-disclosure Agreement
   - iii. Compensation Agreement
   - iv. Collective Bargaining Agreement

   v. Wage Agreement
   vi. Agreement between employer and employee going abroad
   vii. Agreement to refer disputes to arbitration
   viii. Contract Labour Agreement
   ix. Agreement for appointment of Managing Director
   x. On the Job Training Agreement.

9. Documents for Private Equity Funding

   i. Business Plan
   ii. Term Sheet
   iii. Warranties and Indemnities
   iv. Disclosure Letter
   v. Shareholders' / Investors' Rights/ Subscription Agreement.

10. Other legal documents

   i. Affidavit
   ii. Plaint
   iii. Written Statement
   iv. Notices.

DEEDS OF POWER OF ATTORNEY i.e. GENERAL POWER OF ATTORNEY AND SPECIAL POWER OF ATTORNEY

Power of Attorney

A Power of Attorney ("PoA") is an instrument whereby a specified person or persons are empowered to act for and in the name of the person executing the instrument ("donor"). Power of Attorneys are specifically or incidentally referred to in several statutes. It is a type of agency, and law relating to the powers of attorney forms part of the general law of agency. The law of agency in India is contained in Chapter X, sections 182 to 238 of the Indian Contract Act, 1872. The statutory provisions concerning Power of Attorneys are found in the Powers of Attorney Act, 1882.

General Power of Attorney

Where the instrument is executed generally for certain acts, it is called "General Power of Attorney", i.e. if the Power of Attorney authorizes the agent to act generally on in more than one transaction in the name of the principal, it is known as general power-of-attorney. However, the word "general" means that the power must be general in respect to the subject-matter.

Specimen Model of General Power of Attorney

GENERAL POWER OF ATTORNEY

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, ________________________ son of ______________________, resident of _________________________ _____________ at present residing at ____ do hereby appoint

________________________, s/o ____________________, residing at ___________________________________ to be my Attorney for me and in my name and on my behalf.

WHEREAS I own various movable and immovable properties in various parts of India described in the Schedule I hereto and I have interest in various firms, companies, association of persons, trusts, societies as partner, proprietor, shareholder, member, trustee, beneficiary, etc. and/or otherwise, described in the Schedule II hereto.

AND WHEREAS I am presently residing out of India as mentioned hereinabove for the time being, I am personally unable to attend to my day to day affairs and for reasons of convenience it is necessary that I should appoint an attorney and confer upon him the powers hereinafter stated.

KNOW ALL BY THESE PRESENTS THAT

I the said ____________________________ do hereby nominate and constitute and appoint Shri ___________________________________ son of late __________________________________ at present residing at ________________________________ as my lawful Attorney for me in the name and on behalf of myself and/or my said Attorney and in any of my said capacities and in the name and on behalf of any partnership firm, association of persons, trustee, beneficiary or businesses in which I am now or may in future in any manner become interested to do exercise, execute and perform all or any of the following acts, deeds and things, namely:-

1. **Commercial**

   1.1 **To transact business:-** To commence, transact, manage, carry on, close down any of my business and to do all things requisite or necessary or connected therewith including correspondence with any person or authority.

   1.2 **To buy and sell:-** To buy, receive, store and hold and to sell, pledge, hypothecate, give on hire or otherwise deal with any goods, articles, things or movable property.

   1.3 **To open branches:-** To open, establish, conduct, shift and/or close any branch of any business at any place or places.

   1.4 **To contract:-** To enter into, sign, execute, vary, alter, terminate, suspend, and repudiate any contracts.

   1.5 **Partnership business:-** To act as a partner in the firm or firms in which I am a partner at present or become a partner in future and commence, carry on, close, dissolve or retire from any business of any partnership with any person and for the said purpose to do all acts as partner or partners therein including banking operations, execution of partnership, retirement, dissolution or other deeds and documents.

2. **Property**

   2.1. **To acquire and to transfer:-** To purchase, take on lease, to take charge or mortgage on and to acquire in any manner and to sell, mortgage, settle, charge, lease, grant tenancy or otherwise transfer and/or in any manner and/or on any terms deal with any immovable or real property or properties or any interest therein.

   2.2. **To manage and maintain:-** To hold, defend possession, manage and maintain movable, or immovable properties described in Schedule 1 herein and other immovable properties acquired by me hereafter.

   2.3. **To receive rents, etc.:-** To demand, recover and receive rents, *mesne* profits, licence fees, maintenance charges, electricity charges, corporation taxes and all other sums of moneys receivable in respect of my properties and to make all just and reasonable allowance therein in respect of rates, taxes, repairs and other outgoings and to take all necessary steps whether by action, distress or otherwise to recover any property or sums of money in arrears.

2.4. **To pay outgoings:-** To pay all taxes, rates, assessments, charges, expenses and other outgoings whatsoever payable for or on account of my properties or any part thereof and to insure any buildings thereon against loss or damage by fire and other risks as be deemed necessary and/or desirable and to pay all premiums for such insurances.

2.5. **To serve notice on tenants:-** To sign and give any notice to any occupier of any property belonging to me to quit or to repair or to abate any nuisance or to remedy any breach of covenant or for any other purpose whatsoever.

2.6. **To construct, repair and/or reconstruct:-** To take down, demolish, rebuild and/or repair any of my house, building or other structure of whatever nature.

2.7. **To get utilities: -** To apply for and obtain electricity, gas, water, sewerage and/or connections of any utilities and/or to make alterations and/or close down and/or have disconnected the same in my properties.

2.8. **To view the condition of any property:-** To enter upon any of my property or any part of it as often as be desired to view the state of repair thereof and to require any occupier as a result of such view to remedy any want of repair or abate any nuisance.

2.9. **To enforce covenants:-** To enforce any covenant in any lease, licence or tenancy agreement or any other document affecting any of my property and if any right to re-enter arises in any manner under such covenants or under notice to quit, then to exercise such rights amongst others.

2.10. **To deal with trespassers:-** To warn off and prohibit and if necessary proceed against in due form of law against all trespassers on any of my property and to take appropriate steps whether by action or otherwise and to abate all nuisances.

2.11. **To prepare and have sanctioned the plans: -** To get prepared plans for construction of any building or structure and/or otherwise on any of my property and to have the same sanctioned, modified and/or altered by any Corporation, Municipality or other authority and in connection therewith or to make necessary applications, give undertakings, pay fees, obtain sanctions and such other orders and permissions as may be expedient.

2.12. **To apply for obtaining building materials:-** To apply for and obtain such permission as may be necessary for obtaining steel, cement, bricks and other construction materials and construction equipments and to appoint architects and contractors for the construction of building or buildings to be constructed on the plots belonging to me.

2.13. **To act in proceedings under rent control legislation:-** To appear and represent in any proceedings for fixation of fair rent and/or for any other purpose or purposes before any court, Rent Controller or other authority in connection with any matter relating to and/or arising out of any of my property.

2.14. **To obtain any certificate:-** To apply for and obtain such certificate and other permissions and clearances including certificates and/or permission under any law relating to ceiling on urban land, or other law relating to land and/or buildings both urban and rural or under the Income-tax Act or any other law as may be required for execution and/or registration of any conveyance or other document and/or for transferring any rights in any land, building or other property belonging to me or acquired by me hereafter.

2.15. **To file declarations:-** To prepare, sign, declare and file declarations, statements, applications and/or returns and otherwise in connection with holding, possessing, acquiring, transferring, partitioning or otherwise dealing with any of my property before any appropriate or other authority as may be required under any law or laws now prevailing or as may in future become applicable and to do, exercise, execute and perform any or all the necessary acts, deeds and things required thereunder.

3. **Companies**

3.1. **To promote company:-** To promote or form or cause to be promoted or formed or join with any other person in promoting or forming and to do all things necessary or proper to be done or causing to be formed and incorporated a company with limited or unlimited liability for any object and to settle and sign the memorandum and articles of association, prospectus, application forms, statement in lieu of prospectus and all other papers required for or in connection with incorporation, commencement of business of such company and other acts, relating thereto.

3.2. **To spend money in promoting a company:-** To expend or agree to expend moneys for promoting and forming any such company as aforesaid and in taking up and paying for any shares in my name in any such company as aforesaid.

3.3. **To contract to take shares:-** To sign and file with the Registrar of Companies or any other appropriate authorities contract in writing to take from and/or pay for any share or shares in any such company as aforesaid in my name.

3.4. **To apply for, accept and deal with shares:-** To make application or applications for and take allotment or allotments or purchase or otherwise acquire or hold any share or shares in any company in my name and to sell, transfer, pledge, hypothecate and/or deal with any share or shares held by me or acquired by me hereafter and to execute and/or deliver all deeds and documents including transfer deeds in connection therewith and/or for registration of any transfer and/or transmission.

3.5. **To consent to act as a director:-** To sign and file with the Registrar of Companies or any other appropriate authority in my name, consent in writing to act as a director of any company as aforesaid.

3.6. **To exercise shareholder's privileges:-** To attend, vote and otherwise act in the meetings of any company or companies or to appoint or act as proxy or representative in respect of any shares, stock or debentures now held by me or which may hereafter be acquired by me and generally to exercise all rights and privileges and perform all duties in respect of any shares, stocks or debentures as the holder, owner and/or registered owner thereof or as otherwise being interested in any company including carrying on correspondence and making or consent in the making of any applications in connection therewith before the Central Government, court or other authority under the Companies Act or any other law for the time being in force.

3.7. **To transfer securities:-** To transfer any share, stock, debenture or other securities held by me or to be acquired by me hereafter in any company and to execute transfer deeds, receipts and all other papers in connection therewith and also to transmit and/or apply for and/or to consent to the transmission of any share, stock, debenture and/or other securities and/or have the same registered and/or to have such registration altered and/or cancelled in any manner.

3.8. **General:-** To do such acts and deeds and to execute such papers and documents as may be necessary in any capacity as shareholder, debtor, creditor or otherwise in relation to any company which may be required to be done by me.

3.9. **To receive bonus shares and other benefits: -** To receive and to hold and to deal with bonus shares and all other benefits that may accrue as a shareholder or otherwise in relation to any company.

4. **Investments**

4.1. **To sell investments:-** To acquire or sell, transfer, assign or join in acquiring or selling, transferring or assigning ail or any stocks, shares, annuities, debentures, stocks, bonds, obligations, government securities, units and other securities or investments of any nature whatever which do now or shall hereafter stand in my name or to which I am now or may at any time hereafter be entitled to and for that purpose to employ and pay brokers and other agents in that behalf and to receive and give receipts for the purchase money payable in respect of such sales and to transfer any investments so sold to the purchaser or purchasers thereof or as he or they direct and for these purposes to sign and execute all such contracts, transfer deeds and other writings and do all such other acts as may be necessary for effectually transferring or assigning the same.

4.2. **Allotment of shares in companies:-** To apply for and accept allotments of shares in my name in any company, corporation or body corporate or any statutory body.

4.3. **To receive dividends and repaid capital sums:-** To demand, sue for and receive from any company, corporation, government or other body politic or person all deposits, dividends, interest, bonuses or any other sums that may become due in respect of any investment and likewise any capital sum represented by or comprised in any investment held by me as and when the same shall be payable or repayable and for any such purpose to sign, indorse and execute all receipts, dividends and interest warrants, cheques, releases, discharges, reconveyances or other deeds, documents, instruments and other writings whatsoever that may be required or necessary for the purpose.

4.4. **Investment in and dealing with provident funds:-** To operate, open, withdraw and deal with funds in the Public Provident Fund Account or any other provident fund accounts whatsoever in my name.

4.5. **Investments in company deposits, shares, etc.:-** To invest my money in company deposits, shares, stocks, debentures, bonds, units or other corporate securities or securities of local authorities, any other statutory bodies or corporations, whether incorporated in India or in any other country, in such manner and upon such securities as my attorney shall in his absolute discretion think fit and from time to time withdraw any such moneys and apply the same to any purpose as he may think fit.

4.6. **To initiate proceedings:-** To give notices, commence any legal proceedings or use any other lawful means that may appear to my attorney desirable or necessary in order to safeguard or enforce my rights in or in connection with any of the investments with full power to prosecute or discontinue any such proceeding and to compromise or submit to arbitration any matter in dispute or doubt.

4.7. **To pay all calls:-** To pay all calls that may be lawfully made or other expenses that may be incurred in relation to any of my investments and to give security for the payment of the same.

4.8. **To assent to arrangements:-** To assent (if it seems to my attorney necessary or desirable) to any arrangement modifying any rights, privileges or duties in relation to any of my investments and to agree to any scheme or arrangement for the increase or reduction of the value or amount of the same or of the capital of any company or corporation and for any such purpose to deposit, surrender or exchange any of the investments or the documents of title relating thereto and to pay any contribution or incur any other necessary expense in connection with any such scheme or arrangement.

4.9. **To apply for and contract for investments:-** To tender, contract for, purchase, accept and sign the transfer into my name any government securities, securities of local authorities or any statutory body, shares, stocks or debentures in any such company, corporation or body as aforesaid or other stocks, funds, debentures and securities of any and every description whatsoever or any other properties.

5. **Banking**

5.1. **Banking operation:-** To open, operate, continue or close any account including any overdraft or other loan account and/or saving account, current, fixed or other accounts and also safe deposit lockers and all accounts whatsoever in my name and on my behalf with any bank or banks that may be existing or may in future be opened in my name or in the name of my firm or firms or business or businesses or in my capacity as trustee or beneficiary of any trust with any bank or banks including Postal Savings Bank.

5.2. **Drawing and negotiations of cheques: -** To draw, sign, negotiate and/or endorse cheques, payment orders, drafts, dividend warrants and/or any other instruments and to execute, enter into, acknowledge, do and present all such deeds, instruments, contracts, agreements, acts, deeds and things as shall be requisite or deemed fit and proper for or in relation to all or any of the purposes, matters or things herein contained or others with any bank or banks.

5.3. **To deal with bills of exchange:-** For all or any of the banking purposes to draw, accept, endorse, discount or otherwise deal with any bills of exchange, bills of lading, delivery orders, promissory notes or other mercantile instruments relating to money, goods, properties or otherwise.

5.4. **To operate bank locker or safe deposit vault locker: -** To operate any bank locker or safe deposit vault locker and to deposit therein and withdraw therefrom any articles belonging to me.

6. **Money**

6.1. **To realise loans or borrow money:-** To realise loans and/or borrow money from time to time from any bank, institution, or any person or persons, organisation whatsoever against the security or properties both movable and immovable belonging to me or any of my firm or firms of business or businesses in which I am now or may hereafter become interested and to execute, sign and register mortgage, charges, transfer and/or give other security or securities by any other deed or deeds on such terms and conditions as my said attorney or his substitute or substitutes may think fit and proper.

6.2. **Loans and advances:-** To make and/or to receive any loan or advance from any bank, financial institution or other person to such extent and on such terms as the said attorney may deem expedient and also to secure the same by pledging, hypothecating, mortgaging, charging or any other manner encumbering any of my movable or immovable property.

6.3 **Miscellaneous**

6.3.1. To agree to charge or pay any interest or other considerations for any loan and/or advance and to vary such rates of interests or consideration from time to time.

6.3.2. To remit, reduce or settle any claim of any moneys, losses and/or damages.

6.3.3. To draw, execute, negotiate, cancel, present for payment and/or make or receive payment of any promissory note, bill of exchange, bond or undertaking regarding any money receipt and/or advance.

7. **Representations**

7.1. **To represent before bank or banks, insurance companies, etc:-** To represent me or any of my firm or firms or business in any of the bank or banks, insurance companies, courts, registration offices, municipal offices, office of competent authority, urban land ceiling, post offices, sales tax offices, income-tax offices, customs offices, revenue offices or any co-operative society, Central or any other State Government or other authority, society, body corporate or other person for any purpose or purposes whatsoever and do all acts as may be expedient before the same or in connection therewith.

7.2. **To prepare, sign and file tax returns:-** To prepare, sign, execute and/or file any of my and/or any of my firm or firms or business or businesses in my personal capacity or as trustee or beneficiary of any trust, sales tax returns, income-tax returns, or any other returns under the Income-tax Act, 1961, Wealth-tax Act, 1957, Gift-tax Act, 1958 and/or any other law for the time being in force or other returns, statements, papers, documents in connection with the aforesaid Acts, to sign and/or submit returns, statements of accounts, balance sheets, declaration forms, to receive refund orders or vouchers from any of the aforesaid authorities, to apply for and to sign and submit to necessary authorities and to represent me or any of the firm or firms or business or businesses, trusts, proprietary concerns in which 1 am now or may hereafter be interested as proprietor, partner, trustee or beneficiary with such authority or authorities concerned therewith.

7.3. **Appear before Assessing Officer, etc.:-** To appear before any Assessing Officer, Deputy Commissioner and/or Assistant Commissioner and/or Commissioner and/or Central Board of Direct Taxes and/or tribunal and/or any other authority or authorities in connection with any matter or matters and to represent me or my proprietary concerns, firm or firms, business or businesses, trusts in which 1 am trustee or beneficiary and to produce, explain accounts, documents and papers as may be necessary and to pay taxes and other amounts to such authorities and to any other authority by virtue of these presents and to sign, execute and deliver all other papers, documents and deeds in connection therewith.

7.4. **To appear before registrar, notary public, magistrate, etc.:-** To appear before any Notary Public, Registrar of Assurances, District Registrar, Sub-Registrar of Assurances, Metropolitan Magistrate and other officer or officers or authority having jurisdiction and to acknowledge and register or have registered and perfected all deeds, instruments and writings, executed, signed or made by me personally or as partner of any firm or firms or business or businesses or by my said attorneys or any of them by virtue of the powers herein conferred.

8. Trusts

8.1. **To execute trusts:-** To do all acts, deeds relating to any matter in which I am a trustee and/or beneficiary and to exercise all powers and authorities elsewhere hereunder or otherwise as expedient.

8.2. **To exercise powers:-** To execute and exercise in relation to any land or investment or property for the time being subject to any trust and all powers and description for the lime being vested in me as such trustee or as beneficiary as aforesaid or under any deed of trust, settlement or other documents to the extent lawfully possible.

9. Execution and registration of documents

9.1. **To execute documents (stocks, shares, annuities):-** To execute all deeds and other instruments necessary or proper for transferring any stock, shares, annuities, debentures, obligations and other securities held by me or to be acquired by me hereafter to the purchaser or purchasers thereof.

9.2. **To execute and register deeds:-** To sign, execute, enter into, modify, cancel, alter, draw, approve, present for registration and admit registration of all papers, documents, contracts, agreements, conveyances, mortgage deeds, leases, grants, assurances, applications, declarations, trust deeds and other documents as may in any way be required to be so done for or in connection with any movable or immovable property belonging to me or to be acquired by me hereafter or of any part thereof or any interest therein including those held by me as owner, lessor, lessee, partner, mortgagor, tenant, trustee or otherwise be interested for the time being including those connected with the management and development of any business and also in connection with the sale, purchase, lease, transfer and disposition or construction or sanction of plan or obtaining of clearances or permits from the Government or for any other purpose whatsoever.

10. Legal proceedings

10.1. **To compound the debts and to submit claims to arbitration:-** To compound with or make allowances to any person for or in respect of any debt or demand whatsoever which now is or shall or may at any time hereafter become due or payable to me and to take or receive any composition or dividend thereof or thereupon and give receipts, releases or other discharges for the whole of the same debts, sums or demands or to settle, compromise or submit to arbitration every such debt or demand and every other claim, right, matter and thing due to or concerning me and for that purpose in my name to enter into, make, sign, execute such agreements as are necessary in like cases, execute such agreements for arbitration or other deeds or instruments as are necessary in like cases and to allow time for the payment of any such debt or demand (with or without security) upon such terms as the attorney may think fit.

10.2. **To conduct and defend legal proceedings:-** To commence, prosecute, enforce, defend, answer or oppose all notices, suits, and other legal proceedings and demands touching any of the matters aforesaid or any other matters in which 1 am now or may hereafter be interested or concerned and also if thought fit with such consent as aforesaid to compromise, refer to arbitration, abandon, submit to judgment or become non-suited in any such action or proceeding as aforesaid before any court, civil, or criminal, or revenue including the Rent Controller, City Civil and Small Causes Courts.

10.3. **To appoint advocates, etc.:-** To appoint any solicitor, advocate, pleader or counsel as may be necessary for prosecuting and defending any suit or proceedings, in the matters relating to my properties, business, firm, trusts, companies or organisations, in which I am interested or become interested hereafter in my name or in the name of my said attorney as he may think fit and proper and to sign vakalatnamas, warrant of attorney in favour of any solicitor, advocate, pleader or counsel engaged by him.

10.4. **To sign plaints and other papers:-** To sign, declare and/or affirm any plaints, written statements, petitions, consent petition, affidavits, memorandum of appeal or any other document or paper in my name in any proceeding or in any way connected therewith.

10.5. **To deposit and receive documents from court:-** To deposit and receive documents and money from any court or courts and/or any other person or authority in my name and give valid receipts and discharges therefor.

11. Receipts and discharges

11.1. **Receive money and goods:-** To demand, collect, sue for, recover and receive from all and every person or persons, body or bodies, political or corporate, court or authority including government and/or local bodies whomsoever concerned or chargeable therewith all or every sum or sums of money including rent, documents, securities, goods, effects, dues, duties, interests, rents, profits, income, purchase consideration, dividends, compensation and/or any other money which shall belong or be or become payable to me or to any of my firm or firms, business or businesses or companies in which I am interested.

11.2. **To collect debts:-** To demand, collect, sue for, recover and receive in my name, from all and every person, body, political or municipal or corporate or firm or company wheresoever and whatsoever all sums of money, debts, dues, goods, wares, merchandise, chattels, effects and things of any nature or description whatsoever which now are or which at any time or times hereafter shall or may become due or owing or payable to or recoverable including those from or by the bank by virtue of any hypothecations, bonds, mortgages, pledges, agreements or other securities whatsoever or upon or by virtue of any bills of exchange, promissory notes, cheques, bills of lading or other mercantile or negotiable instruments whatever or otherwise.

11.3. **To give receipts:-** To receive and give effectual receipts and discharges in my name for all monies, securities for monies, debts, goods, chattels and personal estate which are or may become due, owing, payable or transferable in or by any right, title, ways or means howsoever from any person or persons or corporation or other body or authority.

11.4. **To receive debts, gifts, legacies, etc.:-** To receive and give good and valid receipts and discharges in my name for share of assets of any business or for the purchase money of any share therein or of any part of such share and all such other monies as may be payable to me in any manner whatsoever.

12. **Agents**

12.1. **Agency:-** To act as agents for any person or to appoint any person as agent for any purpose in connection with any business or matter herein contained or otherwise and on such terms and with such powers and authorities as may be deemed by my said attorney to be expedient and to vary, modify and/or terminate such appointment and/or appointments and make other or others.

12.2. **To employ persons in any capacity:-**To employ any person in any capacity for my business firm, trusts, companies in which I am interested and require to employ such person or become interested in future and require to employ such person and to suspend, dismiss or discharge any employee so employed as my said attorney may deem fit.

12.3. **To employ professionals:-** For better and more effectually executing the powers or authorities aforesaid or any of them to retain and employ solicitors, advocates, chartered accountants, managers, consultants or any other professional persons and/or debt collecting or other agents.

13. **Miscellaneous**

13.1. **To enter into bond and indemnities: -** For all or any purpose to give and execute all such bonds, guarantees, indemnities, covenants and obligations in my name.

14. To substitute and appoint in his place (on such terms and conditions as my said attorney shall think fit and proper) one or more attorneys to exercise for me as my attorney or attorneys any or all of the powers and authorities hereby conferred and to revoke any such appointment from time to time and to substitute or appoint any other person or persons in the place of such attorney or attorneys as the said attorney shall from time to time think fit and proper.

15. AND in case of death of the said attorney or inability or unwillingness to act through illness or any other reason to act as my said attorney in relation to all or any of the matters aforesaid, I hereby appoint Smt. ______________________ wife of __________________________ resident of _____________________________ to act as my attorney in place of the said attorney after his death or

during such inability or unwillingness and in the latter case during the subsistence of any such inability or unwillingness as the name of Smt ______________________ had been inserted in this deed instead of the name of the said attorney.

16. And generally my said attorney shall have the power to do all such acts, deeds and things on my behalf and I could have lawfully done, if personally present.

AND I do hereby for myself, my heirs, executors, administrators of acts done and legal representatives ratify and confirm and agree to ratify and by attorney confirm all and whatsoever my said attorney or his substitute or substitutes shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF:

I ______________________ have hereunto set my hand this ______ day of ________________ 20____.

Signed and delivered by the within named

____

WITNESSES:

1. ____
2. ____

Identified by me

(________________________)

Before me

Advocate and Notary Public

Schedule I above referred to

Schedule II above referred to

SPECIAL POWER OF ATTORNEY

If an instrument is executed for specified act or acts, it is called a "Special Power of Attorney". In other words, a Power of Attorney conferring on the agent the authority to act in single or specified transactions in the name of the principal is known as special power-of-attorney.

Specimen model of Special Power of Attorney

POWER OF ATTORNEY TO EXECUTE SALE DEED

BY THIS POWER OF ATTORNEY, I ______________________, s/o ____________________________ residing at ________________________________ do hereby appoint ______________________, s/o _____________________, residing at _____________________________ to be my Attorney for me and in my name and on my behalf.

1. To negotiate and sell my property situated at _____________________ to any purchaser at such price and at such time as my said Attorney may in his absolute discretion think proper to agree upon and for such purpose to execute any document, deed or other papers and to present the same for registration and to admit the execution thereof.
2. To receive from the purchaser the consideration money for the said property and to give receipt and discharge therefore as may be required.

3. To deliver physical possession in the manner that is possible in the circumstances of the said property at ________________ to the purchaser or to the nominee of the purchaser.
4. To apply to the Municipal Corporation of ________________________ for mutation of the said property in favour of and in the name of the purchaser or his nominee and to do and execute all deeds, assurances and to do all such acts as may be necessary to fully effectuate the sale of the said property.

I hereby agree and undertake to ratify all acts, deeds, assurances, done, given, executed or made by my said Attorney under the powers conferred by this Power of Attorney as if the same were done or made by me personally.

IN WITNESS WHEREOF, I ____________________ have hereunto set my hand this_____ day of ___________ 20____.

Signed and delivered by the within named

____

WITNESSES:

1. ______________________________________
2. ______________________________________

Identified by me

(________________________)

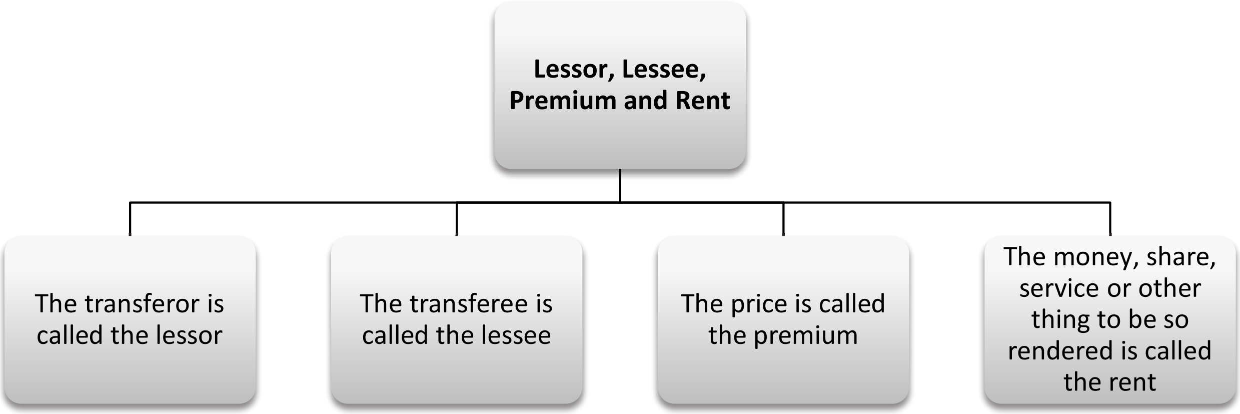
Before me

Advocate and Notary Public

LEASE DEED & LICENSE DEED

LEASE – Meaning

According to Section 105 of the Transfer of Property act, 1882, a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.


Lessor, Lessee, Premium and Rent
The transferor is called the lessor
The transferee is called the lessee
The price is called the premium
The money, share, service or other thing to be so rendered is called the rent

Leases how made

A lease of immovable property from year to year, or for any term exceeding one-year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument binds both lessor and the lessee.

Essential Elements of lease

1) **Parties:** The parties to a lease are the lessor and the lessee. The lessor is also called the landlord and the lessee the tenant.
2) **Subject matter of lease:** The subject matter of lease must be immovable property. The word "immovable property" may not be only house, land but also benefits to arise out of land, right to collect fruit of a garden, right to extract coal or minerals, rights of ferries, fisheries or market dues. The contract for right for grazing is not lease. A mining lease is lease and not a sale of minerals.
3) **Duration of lease:** The right to enjoy the property must be transferred for a certain time, express or implied or in perpetuity. The lease should commence either in the present or on some date in future or on the happening of some contingency, which is bound to happen. Though the lease can commence from a past day, but that is for the purpose of computation of lease period, as the interest of the lessee begins from the date of execution. No interest passes to the lessee before execution. In India, the lease may be in perpetuity.
4) **Consideration:** The consideration for lease is either premium or rent, which is the price paid or promised in consideration of the demise. The premium is the consideration paid of being let in possession, such as Salami, even if it is to be paid in instalments.
5) **Sub-lease:** A lessee can transfer the whole or any part of his interest in the property by sub-lease. However, this right is subject to the contract and he can be restrained by the contract from transferring his lease by sub-letting. The lessee can create sub-leases for different parts of the demised premises. The sub-lessee gets the rights, subject to the covenants, terms and conditions in the lease deed.

Specimen model of General Lease Deed

Lease Deed

This Lease Deed made on this _____ day of _____________, 20_____ at ______________________________________

BETWEEN

Shri__________________son of__________________resident of___________________________________(Hereinafter called "the LESSOR", which expression shall, unless repugnant to the context and meaning include his heirs, successors, administrators and assigns) of the ONE PART;

AND

Shri __________________, son of ___________________resident of____ (Hereinafter called "the LESSEE", which expression shall, unless be repugnant to the context and meaning, include his heirs, successors, administrators and assigns) of the OTHER PART.

WHEREAS

1. The Lessor is in complete possession of the building bearing Municipal No ______ Situated at ________________________________and more particularly described in the Schedule I given below.
2. On the request of the Lessee, the Lessor has agreed to grant lease in respect of the demised premises for a term of ______ years in the manner hereinafter stated.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. In pursuance of the said agreement and in consideration of the rent hereby reserved and of the covenants, conditions and stipulations hereinafter contained and of the Lessee's part to be paid, observed and performed, THE LESSOR HEREBY DEMISES UNTO THE LESSEE ALL THAT the building bearing Municipal no ______ situated at _____________________ and hereinafter called as the demised premises, TOGETHER WITH ALL the fixtures and fittings therein, a complete list whereof is given in Schedule II, hereto TOGETHER WITH the electrical installations and together with the right for the Lessee, its employees, servants, agents, customers and persons authorised by the Lessee in common with the Lessor and all the persons authorised by the Lessor to use the entrances, doorways, entrance hall, stair cases, landings and passages in the demised premises for the purpose of ingress thereto. The Lessor and Lessee agree as follows:
    i. The Lessee shall occupy the demised premises for the period of _____ years only commencing from the ______________ and determining on ________________________.
    ii. The Lessee shall pay to the Lessor during the said term monthly rent of Rs. ________________ payable by seventh of each succeeding calendar month to which it relates.
    iii. The Lessee has paid to the Lessor a sum of Rs _____________ as security deposit and a sum of Rs __________________ as advance rent, the receipt of which the Lessor acknowledges.
    iv. The security deposit shall be returned on determination of the lease after deduction for damages if any to the property except reasonable wear and tear expected and the advance rent paid shall be adjusted by __________________.
2. The Lessee hereby covenants with the Lessor as follows:
    a. To pay the rent as aforesaid on the days and in the manner aforesaid.
    b. To pay the electricity bills for the electricity consumed for lighting the demised premises and for operation of Air Conditioners, Fans, Computers and electrical appliances in the demised premises.
    c. Not to make any structural alterations into or upon the demised premises or make any alterations or addition to the external appearance or any part of the demised premises without the previous consent of the Lessor in writing.
    d. To use the demised premises for office purposes of the Lessee.
    e. Not to place or keep or permit to be placed or kept on the demised premises any offensive, dangerous or highly inflammable or explosive material or any other article or things, which may constitute a danger, nuisance or annoyance to the demised or surrounding premises or the owners or occupiers thereof.
    f. Not to sub-let, transfer, assign or part with the possession of the demised premises or any part thereof.
    g. To permit the Lessor, his servants, employees or agents duly authorised by him to enter into and upon the demised premises at all reasonable times for viewing the condition of the demised

premises or doing such works or things as may be requisite or necessary for any repairs, alteration, servicing or improvements to the demised premises.

h. To hand over the peaceful possession of the demised premises at the end or the sooner determination of the said term together with all the Lessor's fixtures and fittings in as good condition as received.

i. Not to obstruct or suffer to be obstructed the entrance hall, entrances, doorways, passages, staircase or lifts.

j. To carry minor repairs in the demised premises not exceeding the extent of Rs __________ per year.

k. To replace all broken fittings and fixtures by equally good or better substitutes.

3. The Lessor hereby agrees with the Lessee as follows:

   a. That the Lessee shall peaceably and quietly hold, possess and enjoy the demised premises during the term without any interruption, disturbance, claim and demand by the Lessor or any person lawfully claiming under or trust for the Lessor.

   b. To keep the interior, exterior of the demised premises, the drainage thereof and the water pump in good and tenable repair and condition.

   c. To keep the entrance, doorways, entrance halls, staircases, lobbies and passages in the said building leading to demised premises well and sufficiently cleaned and lighted at his own expense.

   d. To pay rates, taxes, assessment, duties, cess, impositions, outgoings and burdens whatsoever payable to local or other authority which may at any time or from time to time during the term hereby created be imposed or charged upon the demised premises.

4. It is hereby agreed that if the rent or any part thereof payable in respect of the demised premises shall be in arrears for a period of two months or if the Lessee shall omit to perform or observe any covenants or conditions on the Lessee's part herein contained, the Lessor may re-enter upon the demised premises after serving a notice to the Lessee.

5. If within a period of one month after the issue of such notice, the Lessee does not pay the rent or does not perform or observe the covenant or condition and thereupon all rights of the Lessee hereunder shall determine.

6. It is hereby expressly agreed between the parties as follows:

   a. The Lessee shall be entitled to erect temporary fittings, fixtures, wooden partitions, cabins or make any such addition or alteration, as may be necessary for its use by the Lessee;

      Provided that the Lessee shall remove the said fittings, fixtures, wooden partitions, cabins, additions or alterations and restore the demised premises to the Lessor on the expiry of the term or sooner determination of the lease in the same condition as existed before making such changes.

   b. If the Lessor fails to pay the taxes, charges, assessment payable by him, or fails to carry out the necessary repairs and other work which he has to carry out as provided herein, the Lessee may after one month notice in writing, pay, discharge and carry out the same at its own cost and the Lessee may set off the same from the rent payable to the Lessor under these presents.

7. The stamp duty and all other expenses shall be borne and paid by the Lessee.

The Schedule I above referred to

The Schedule II above referred to

Signed by the above named Lessor
(Name, Signature and Details)

Signed by the above named Lessee
(Name, Signature and Details)

Witnesses

1. ______________________

   (Name, Signature and Details)

2. ______________________

   (Name, Signature and Details)

LEAVE AND LICENCE

There are two ways in which one can rent out property: either execute a lease deed or make out a leave-and-licence agreement.

From the legal point of view, while a lease agreement is the safest for tenants, landlords prefer a leave-and-licence agreement. This is because a licence does not create any interest in the property for the licensee. The licensee merely gets the right to enter, occupy and use the premises. Technically, the right to occupy premises under a lease agreement is governed by the provisions of section 105 of the Transfer of Property Act, whereas the right to occupy licensed premises is governed by section 52 of the Indian Easement Act.

The Transfer of Property Act creates an interest in the property for the lessee for the duration of the lease. This enhances a lessee's chances of holding on to the property even after the expiry of the lease term. On the other hand, the Indian Easement Act creates no titles or interest for the licensee. The licensee merely gets the right to enter and use the premises for a limited period without acquiring any interest in it for even the duration of the licence agreement. The licence can be terminated at will at the discretion of the licensor.

A Licence is defined under Section of 52 of the Indian Easements Act, 1882, which reads as under:

"Where one person grants to another, or to a definite number of other persons, right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right be unlawful and such right does not amount to an easement or an interest in property, the right is called Licence".

The essential distinction between a Lease and a Licence is that in a Lease, there is transfer of interest in the property while in the case of licence, there is no such transfer although the licensee acquires only a personal right to occupy the property. This principle has been confirmed by number of various High Courts and Supreme Court judgments.

Licence is a grant of a right to do something upon an immovable without creating interest in the property. It is therefore, distinguishable from an allied grant such as a lease or an easement. Both lease and easement create an interest in the property. Licence is only a permission to do something on an immovable property like occupation, or enjoying fruit thereof, or using it for some other purpose.

A licence is notionally created where a person is granted the right to use the premises without becoming entitled to the exclusive possession of them or the circumstances and conduct of the parties show that all that was intended was that the grantee should be granted a personal privilege with no legal interest.

If the agreement is merely for the use of the property in a certain way and on certain terms while the property remains in the owner's possession and control. A licence is a personal right given to the licensee and, therefore, Section 56 of the Easements Act, 1882 provides that licence cannot be transferred by the licensee or exercised by his servants and agents.

CASE LAWS

In the matter *of Chandulal* vs. *Delhi Municipal Corporation*, the Full Bench of the Delhi High Court in a Judgement reported in AIR 1978 Delhi Page 174 has inter alia held that:

"A lease is not a mere contract but envisages and transfers an interest in the demised property creating a right in favour of the lessee in rem. A licence only makes an action lawful which without it would be unlawful but does not transfer any interest in favour of the licensee in respect of the property.

In the case of a licence there is something less than a right to enjoy the property in the licensee. It cannot be exercised by servants and agents and is terminable while on the other hand, in the case of a lease, there is a transfer of a right to enjoy the property or in other words the lessee is entitled to enjoy the property. A bare licensee having no interest in the property but is only a personal privilege to the licensee. After the termination of the licence, the licensor is entitled to deal with the property as he likes. The right he gets as an owner in possession of his property. He need not secure a degree of the Court to obtain this right. He is entitled to resist in defence of his property the attempts of a trespasser to come upon his property by exerting the necessary and reasonable force to expel a trespassed.

If however, the licensor uses excessive force, he may make himself liable to be punished under a prosecution, but he will infringe no right of the licensee. No doubt a person in exclusive possession of the property is prima facie to be considered to be a tenant; nevertheless he would not be held to be so if the circumstances negative any intention to create a tenancy."

Specimen Model of General Leave and Licence Agreement

LEAVE AND LICENCE AGREEMENT

THIS AGREEMENT OF LEAVE AND LICENCE is made on this _____ day of _____________, 20_____ at _____________________________________.

BETWEEN

Shri__________________son of__________________resident of____________________________________(Hereinafter called "the LICENSORS", which expression shall, unless repugnant to the context and meaning include his heirs, successors, administrators and assigns) of the ONE PART;

AND

Shri __________________, son of ___________________resident of____ (Hereinafter called "the LICENCEE", which expression shall, unless be repugnant to the context and meaning, include his heirs, successors, administrators and assigns) of the OTHER PART.

WHEREAS the Licensors are the sole directors of the company _________________ which owns the office at ____ ________________________________.

AND WHEREAS the Licensors are thus the absolute owners of the said office and accordingly absolutely entitled to use, occupy, possess and enjoy the said premises.

AND WHEREAS the Licensee has approached the Licensors and has requested the Licensors to let out to it, the Licensee, the said premises on leave and licence basis, which the Licensors have agreed to do on certain terms and conditions mutually agreed upon by and between them.

AND WHEREAS the parties hereto are desirous of recording the said terms and conditions.

NOW THIS AGREEMENT TO LEAVE AND LICENCE WITNESSETH AND IT IS HEREBY AGREED BY THE PARTIES HERETO AS UNDER:

1. The Licensors shall grant unto the Licensee and the Licensee hereby accepts from the Licensors a licence to use and occupy the office premises bearing No. _____ on the _____ floor of the building known as ______________ , save and except one cabin in the said premises (hereinafter called "the licensed premises") situate lying and being at _________________________________) Mumbai on leave and license basis.
2. The duration of the licence hereby granted shall be for a period of two years only commencing from the date the Licensors puts the Licensee in possession of the licensed premises.
3. In consideration of the Licensors permitting the Licensee to use and occupy the licensed premises on leave and licence basis, the Licensee shall pay to the Licensors a sum of Rs.____________ (Rupees _________________ only) per month as and by way of licence fee and/or compensation for the use and enjoyment of the licensed premises for the said period of two years. However, the Licensee shall pay to the Licensors the licence fee and/or compensation for the entire period of the licence amounting to Rs._____________ in advance simultaneously with the execution of this Agreement. The said licence fee shall be deemed to be standard licence fee or compensation payable in respect of the said premises. If the Licensee challenges the said licence fee payable in respect to the said premises as not being standard licence fee or compensation before any Court of or Forum, then and in that event, this Agreement shall come to an end and the Licensee shall forthwith quit, vacate and hand over quiet, vacant and peaceful possession of the said premises.
4. In addition to the aforesaid payment of the said sum of Rs.______________ (Rupees ______________________ only) per month, the Licensee shall also be bound and liable to pay directly electricity charges for the electricity consumed in the licensed premises as per the separate meter installed for the purpose.
5. The Licensee hereby covenants with the Licensors as under:
   a) To pay to the Licensors the licence fee and/or compensation payable under this Agreement at the time and in the manner provided hereinabove without any deduction and without challenging the same in any court of law or forum as not being standard licence fee and/or compensation payable in respect of the licensed premises;
   b) To bear and pay electricity charges for the electricity consumed in the licensed premises;
   c) All telephone and fax and other charges are actually used by the Licensee and bills are received from _____________;
   d) To use the licensed premises for the purpose of office purpose only and for no other purpose;
   e) To keep the licensed premises in good and tenantable order and condition (reasonable wear and tear excepted):
   f) To hand over to the Licensors the possession of the said premises in the same order and condition as it was when the Licensee is put in possession of the Licensed premises but subject to what is stated hereinafter;
   g) Not to hold the Licensors responsible for or liable for any loss or damage suffered by the Licensee on account of any theft, fire or other destruction caused to or in the said premises or to any property brought by the Licensee in the said premises or by any act or omission on the part of the occupants of the other premises or to their servants or agents or visitors;
   h) Not to sub-let or give on leave and licence basis or on any other basis the said premises or any part portion thereof nor the Licensee permit any one to use and occupy the said premises or any part or portion thereof;

i) Not to damage in any way the walls, partition, walls, flooring and ceiling of the said premises or any of the Licensors fixtures, fittings and articles installed lying and being in the said premises and to keep the same in good order and condition (reasonable wear `and tear and loss or damage by fire, accident, irresistible force or act of God excepted);

j) Not to paint, affix or exhibit any name, sign, symbol or graph or writing or anything upon or outside the said premises save and except that the Licensee an it shall be at liberty to put the name board or name plate of itself on the outer wall of the said premises to indicate the location and address of the Licensee;

k) The Licensee shall not carry out any work of structural alteration in or about the said premises or any portion thereof.

l) To make good to the Licensors any loss or damage that may be caused to the said premises or any other fittings, fixtures, articles or property of the Licensors therein as a result of negligence on the part of the Licensee, its servants employees agents customers visitors and/or other persons calling at the said premises in connection with the business of the Licensee or otherwise howsoever and such loss or damage shall be ascertained by the Licensors and be binding on the Licensee;

m) Not to do or permit to be done upon the said premises anything which may be or become a nuisance to the Licensors or other occupants of the said building "______________" or any of the neighboring building;

o) Not to bring in or to store in the said premises any combustible materials or otherwise dangerous things that may imperil the safety of the building or may increase the premium of insurance of the building or vender void the insurance;

p) To perform and observe strictly the provisions hereof and also the provisions of law of the country for the time being and from time to time in force and also the rules and regulations any bye-laws of the society and/or the terms laid down by the builder and which may for the time being and from time to time be in force;

q) The Licensee shall be in possession of the licensed premises except one cabin and the juridical possession shall remain with the Licensors;

r) To indemnify the Licensors against any loss or damage that may be suffered as a result of breach of any of the provisions herein contained or otherwise due to any act or conduct of the Licensee its staff, employees, servants and agents to the said premises.

s) To remove itself from the said premises and all its staff and employees and all its belongings and to restore the said premises to its original condition (reasonable wear and tear and loss or damage by fire, accident, irresistible force or act of God excepted). Provided However that if the Licensee has carried out any additions and alternations to the said premises which are of a permanent or semi-permanent nature or if the Licensee has brought and installed any furniture fixtures and fittings in the said premises, the Licensee shall and at the time of the determination or earlier termination of the licence hereby granted remove the same from the said premises.

6. The Licensors hereby covenants with the Licensee as follows:-

a) To observe and perform all the terms and conditions and stipulations of all documents under which the Licensors derive title to the office premises;

b) To permit the Licensee to use and occupy the licensed premises without any hindrance or obstruction of any nature whatsoever as long as the Licensee pays the licence fee and or compensation as hereinabove provided and observes and performs all the terms, conditions and covenants contained;

c) To permit the Licensee to install further furniture and fixtures in the licensed premises in order to suit to its purpose;

d) To permit the Licensee to carry out all the requisite repairs to the licensed premises provided however that the Licensee obtains the consent in writing from the Licensors;

e) To comply with the conditions laid down by the owners and to indemnify the Licensee and keep the Licensee indemnified from and against any breach;

f) Not to create charge mortgage or encumbrance in respect of the said premises or any part of portion thereof;

g) Not to sell, transfer or assign the Licensor's ownership rights in respect of the licensed premises to any person or party so as to adversely affect the rights of the Licensee to the licensed premises and the Licensee's right to purchase the licensed premises as hereinafter provided;

h) To insure and keep insured the said premises except in case where the insurance has been taken out by the society;

7. If at any time during the said term the said premises are damaged or destroyed by fire, storm, flood, tempest, earthquake, enemies, war, riot, civil commotion or any other irresistible force, act beyond the control of the Licensee or act of God so as to make the same unfit for use, occupation as office, then in that event the Licence hereby created shall forthwith stand terminated and the Licensors shall refund to the Licensee the advance rent paid by the Licensee to the Licensors for the unexpired period of the licence.

8. On expiry or sooner determination of this Licence, the Licensee shall remove its employees and servants and all its belongings, chattels, articles and things from the said premises and shall not claim any alternate accommodation and shall hand over vacant possession of the premises to the Licensors.

9. The Licensee shall permit the Licensors and their agents at all times to enter upon the said premises in order to view, survey and examine the state and condition of the said premises.

10. It is the express intention of the parties hereto that the Agreement shall be a mere Licence, the use and occupation by the Licensee being restricted for the purpose of using the said premises on the terms and conditions contained in the licence.

11. It is hereby agreed by and between the parties hereto that in case if any of the terms and conditions herein contained shall not be observed or performed, then in that event, the Licensors shall give notice in writing to the Licensee calling upon the Licensee to rectify and/or remedy the breach and in case if the Licensee fails to remedy the breach within a period of four weeks from the date of the receipt of the notice in writing in that behalf from the Licensors, then in that event, the Licensors shall be entitled to terminate this Agreement and enter upon the licensed premises and take possession of the licensed premises. Provided further that before taking possession of the licensed premises if the licensee remedies the breach, then in that event, the Licensors, shall not be entitled to invoke the power given under this Agreement and take possession of the licensed premises.

12. In the event of the Licensee failing to hand over to the Licensors possession of the licensed premises on the expiry or sooner determination of the licence hereby granted as hereinabove provided and continues to remain in occupation and possession of the licensed premises, then in that event, notwithstanding the right conferred upon the Licensors, the Licensors shall take such steps as may be advised to take physical possession of the licensed premises. The Licensors shall also be entitled to charge the Licensee compensation for the use and occupation of the licensed premises at the rate of Rs. ________ per day, which the Licensee agrees and undertakes to pay.

13. The Licensors hereby represent and declare that:

    a) The Licensors are absolutely entitled to the licensed premises;

    b) The Licensors have not created any charge or encumbrance of whatsoever nature on the said licensed premises nor have they created any tenancy or leave and licence or any right in favour of any one in respect of the licensed premises nor shall they create or purport to create any such charge or encumbrance hereafter;

    c) The Licensors have not entered into any Agreement for sale of the licensed premises in favour of any person or party;

    d) The Licensors has not committed breach of any of the rules regulations.

14. Any notice required to be given hereunder shall be sufficiently served on the Licensors, if forwarded by Registered Post Acknowledgement Due to the Licensors aforementioned address and on the Licensee if forwarded by Registered Post Acknowledgement Due to the Licensee's aforementioned Office in ____________ and notice sent by post as aforesaid shall be deemed to be given at the time when in due course of post it would be delivered at the address to which it is sent.

IN WITNESS WHEREOF the parties hereto have hereunto set and subscribed their respective hands and seals the day and year first hereinabove written.

______________________________	______________________________
Signed by the above named Licensor	Signed by the above named Licensee
(Name, Signature and Details)	(Name, Signature and Details)

Witnesses

1. ______________________________

   (Name, Signature and Details)

2. ______________________________

   (Name, Signature and Details)

MORTGAGE DEEDS

Mortgage- Meaning

Mortgage is a transfer of an interest in a specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an agreement, which may give rise to a pecuniary liability. The person borrowing and transferring his interest in an immovable property to the lender is the mortgagor. The lender is the mortgagee. The funds lent against which the property is used as security is the mortgage money. The instrument by which the transfer is effected is called a mortgage-deed.

Types of mortgages

1) Simple Mortgage

Without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that in the event of his failing to pay according to his contract, the Mortgagee shall have a right to cause the mortgaged property to be sold for satisfaction of the mortgaged debt.

2) **Conditional Mortgage**

The mortgagor presumably sells the mortgaged property on condition that on default of payment of mortgage money on a certain date, the sale shall become absolute or on condition that on such payment being made the sale shall become void or on condition that on such payment being made the buyer shall transfer the property to the seller.

3) **Usufructuary Mortgage**

The mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee and authorizes him to retain such possession until payment of the mortgage-money. The mortgagee is allowed to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage money, or partly in lieu of interest or partly in payment of the mortgage money.

4) **English Mortgage**

The mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a provision that he will retransfer it to the mortgager upon payment of the mortgage-money as agreed.

5) **Mortgage by deposit of Title deeds or Equitable Mortgage**

A person delivers to a creditor or his agent documents of title to immovable property with intent to create a security thereon. It can be conducted in a town where the state government concerned may, by notification in the Official Gazette, specify in this behalf.

6) **Anomalous Mortgage**

A mortgage, which is not any of the above, is called an anomalous mortgage.

Specimen model of Simple Mortgage Deed

SIMPLE MORTGAGE DEED

This Deed of Mortgage made on this _____ day of ____________________, 20_____ at ________________.

BETWEEN

___________________, son of _____________________ resident of ______________________________ hereinafter called as a MORTGAGOR of the ONE PART

AND

___________________, son of ____________________ resident of _______________________________ hereinafter called as a MORTGAGEE of the OTHER PART.

WHEREAS the mortgagor is absolutely seized and possessed of or otherwise well and sufficiently entitled to the house bearing municipal no _______ situated on ___________________ Road, _________________________ more particularly described in the Schedule hereunder written;

AND WHEREAS the mortgagor has requested the mortgagee to lend him a sum of Rs. _________________ which the mortgagee has agreed on the mortgagor mortgaging his property.

NOW THIS DEED WITNESSETH THAT in pursuance to the said agreement and in consideration of the sum of Rs. ______________________ at or before the execution of these presents paid by the mortgagee to the mortgagor (the receipt whereof, the mortgagor doth hereby admit and acknowledge and of and from the same hereby release and discharge the mortgagee), the mortgagor hereby covenants with the mortgagee that he will pay on the ______ day of _____________, 20_____ (hereinafter called "the said date"), the said sum of Rs. __________________ with interest @ _______ % per annum from the date of these presents till the repayment of the said sum in full, every quarter the first installment of interest to be paid on the ______ day of ________, 2023 and each subsequent installment on the _____ day of July, October, January and April of each succeeding year until the said sum is repaid in full.

AND THIS DEED FURTHER WITNESSETH THAT in consideration aforesaid, the mortgagor doth hereby transfer by way of mortgage his house bearing municipal no ________ situated at ________________ and more particularly described in the Schedule hereunder written as a security for repayment of the said sum with interest @ _______ per annum with the condition that the mortgagor, his heirs, executors, administrators or assigns shall on the said day pay to the mortgagee, his heirs, executors, administrators or assigns the said sum of Rs ____________ together with interest thereon at the rate mentioned above, the said mortgagee, his heirs, executors, administrators, or assigns shall at any time thereafter upon the request and at the cost of the mortgagor, his heirs, executors, administrators or assigns reconvey the said house, hereinbefore expressed to be mortgaged unto or to the use of the mortgagor, his heirs, executors, administrators or assigns or as he or they shall direct.

AND IT IS HEREBY AGREED AND DECLARED that if the mortgagor does not pay the said mortgage amount with interest when shall become due and payable under these presents, the mortgagee shall be entitled to sell the said house through any competent court and to realise and receive the said mortgage amount and interest, out of the sale proceeds of the house.

AND IT IS FURTHER AGREED AND DECLARED by the mortgagor that during the period, the mortgage amount is not paid and the said house remains as a security for the mortgage amount, the mortgagor shall insure the said house and take out an insurance policy in the joint names of the mortgagor and mortgagee and continue the said policy in full force and effect by paying premium and in case of default by the mortgagor to insure or to keep the insurance policy in full force and effect, the mortgagee can insure the said house and the premium paid by the mortgagee will be added to the mortgage amount, if not paid by the mortgagor on demand.

AND IT IS FURTHER AGREED THAT the mortgagor can grant lease of the said house with the consent of the mortgagee in writing.

AND IT IS FURTHER AGREED BY THE MORTGAGOR that he shall bear stamp duty, registration charges and other out of pocket expenses for the execution and registration of this deed and reconveyance deed but however each party will bear cost and professional charges of his Solicitor/Advocate.

IN WITNESS WHEREOF the parties have put their hands the day and year first hereunder written.

The Schedule above referred to

______________________________	______________________________
Signed by the above named Mortgagor	Signed by the above named Mortgagee
(Name, Signature and Details)	(Name, Signature and Details)

Witnesses

1. ______________________________

   (Name, Signature and Details)

2. ______________________________

   (Name, Signature and Details)

Specimen of Deed of Mortgage by Conditional Sale

DEED OF MORTGAGE BY CONDITIONAL SALE

THIS DEED OF MORTGAGE BY CONDITIONAL SALE is executed on this ______ day of _______, 20___

BETWEEN

__________________, son of ____________________ resident of ____________________________ hereinafter called as a VENDOR of the ONE PART

AND

__________________, son of ___________________ resident of _____________________________ hereinafter called as a PURCHASER of the OTHER PART.

WHEREAS the Vendor is seized and possessed of or otherwise well or sufficiently entitled to the land and premises situated at ______________________________________ and more particularly described in the Schedule hereunder written.

AND WHEREAS the Vendor is in need of money and has requested the Purchaser to advance to him a sum of Rs ________________ which the Purchaser has agreed to do on the Vendor agreeing to execute this deed of sale in favour of the Purchaser in respect of the said property in the manner following.

NOW THIS DEED WITNESSETH AS UNDER

1. Pursuant to the said agreement and in consideration of the said sum of Rs ___________ paid by the Purchaser to the Vendor on the execution of these presents (receipt whereof the Vendor doth hereby admit), he the Vendor doth hereby grant and convey unto the Purchaser all the said piece of land with building thereon and situated at _____________________________________ and more particularly described in the Schedule hereunder written together with all things permanently attached thereto or standing thereon and all the liberties, easements, profits, privileges, rights and appurtenances whatsoever to the said piece of land and premises belonging or in anywise appertaining to or with the same or any part thereof and now or at any time hereafter usually held, used, occupied or enjoyed or reputed as part or member thereof or be appurtenant thereto And all the estate, right, title. claim and demand of the Vendor into and upon the said land and other the premises hereby granted TO HOLD the same unto and to the use of Purchaser subject to what is hereafter provided and subject to the payment of rates, taxes, assessments, dues and duties now chargeable upon the same or which may hereafter become payable in respect thereof to the Government or the Municipal Corporation or any other local authority.

2. And it is hereby agreed and declared that if the Vendor shall at any time hereafter repay to the Purchaser the said sum of Rs _________ within a period of _______ years that is on or before the _____ day of _______, 20___ the grant and transfer of the said property as hereinbefore provided shall become void and in that event the Purchaser shall retransfer the said property to the Vendor or his heirs executors, administrators or assigns by executing a document of re-sale.

3. Provided however and it is agreed that, if the Vendor or his heirs, executors, administrators or assigns shall fail to repay the said amount of Rs __________ within the said period then the grant and transfer of the said property to the Purchaser hereby made shall become absolute in favour, of the Purchaser his heirs, executors, administrators or assigns.

4. And the Vendor doth hereby covenants with the Purchaser that –

    a) The Vendor has good right and full power to grant the said land and building hereby granted or expressed so to be and every part thereof unto and to the use of the Purchaser in manner aforesaid.

b) That the Purchaser shall quietly possess and enjoy the said property and receive the rents, Income and profits thereof without any lawful interruption or disturbance whatsoever by the Vendor or any person or persons lawfully claiming under from or through him and shall be at liberty to pay there out the Govt. revenue and all other charges of a public nature and all rents if any accruing due in respect of the said premises during such possession and any arrears of rent in default of payment of which the said land and premises may be summarily sold and all expenses incurred for the management of the said premises and the collection of rents, Income, profits and all other outgoing including costs of repairs of the said premises.

c) That the said premises are free and clear and forever released and discharged or otherwise by the Vendor well and sufficiently saved, kept harmless and indemnified of and from and against all previous and other estates, title, charges and encumbrances whatsoever had made executed or suffered by the Vendor or any other person lawfully claiming under him.

d) That the Vendor and all persons claiming any estate or interest in the said premises under him, shall and will from time to time and at all times hereafter upon the request of the Purchaser and at the costs of the Vendor do and execute or cause to be done or executed, all such acts, deeds and things whatsoever for further and more perfectly assuring all or any of the said premises unto and to the use of the Purchaser in such manner aforesaid as shall or may be reasonably required by the Purchaser.

IN WITNESS WHEREOF the Vendor has put his hand the day and year first hereinabove written.

THE SCHEDULE ABOVE REFERRED TO

____________________	____________________
Signed by the above named Vendor	Signed by the above named Purchaser
(Name, Signature and Details)	(Name, Signature and Details)

Witnesses

1. ____________________

   (Name, Signature and Details)

2. ____________________

   (Name, Signature and Details)

GIFT DEED

Gift- Meaning

According to Section 122 of The Transfer of Property Act, 1882, “Gift is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the done.”

A gift is a common mode of transfer of property. It is the transfer of certain existing moveable or immoveable property by one person to another. The transfer should be made voluntarily and without consideration. The person transferring the property is called the donor. The person to whom the property is transferred is referred to as the donee. The donee must accept the property during the lifetime of the donor and while he is still capable of giving. In case the donee dies before acceptance, the gift is void.

The essential elements of a gift are –

1) **Voluntary:** The transfer of movable or immovable property should be voluntary. The gift of property by undue influence makes the gift voidable and a suit to set it aside can be brought within three years prescribed by the Limitation Act, 1963.

2) **Without consideration**: A gift is a transfer without any element of consideration. Complete absence of monetary consideration is an important prerequisite. Where there is any equivalent of benefit measured in terms of money in respect of a gift, the transaction ceases to be a gift. In *Shakuntala v. State of Haryana* the Supreme Court stated that it is one of the essential requirements of a gift that it should be made by the donor 'without consideration'.

3) **Donor:** The person transferring the property is called the donor and everyone who is Sui juris (legally competent) can dispose by way of gift, any property or any estate or interest into which he is absolutely entitled.

4) **Donee**: The person accepting the gift is the Donee. All persons whether s*ui juris* or not are competent to receive gifts. A minor can accept the gift, other than where gift is onerous.

5) **Competence to gift**: Any person who is competent to contract can make a gift of his property. A minor, being incompetent to contract is incompetent to transfer. A gift by a minor is void. Competence to contract is an important qualification required for making a gift.

6) **Subject matter of gift:** All property, real and personal, corporeal and incorporeal may be the subject of gift. A future property or mere expectancy, such as an expectation of succession to property, as the possible heir or one of the possible next of kin of a living person cannot be transferred by gift.

7) **Transfer**: The donor should transfer the property voluntarily and without consideration.

8) **Acceptance**: The acceptance of gift should be made by the Donee. The acceptance may be express or may be inferred by the donee's possession of the property or even the donee's possession of the deed of gift within the meaning of section 123, Transfer of Property Act, and therefore the gift became effectual, subject to registration and it is immaterial that the deed was not stamped. The guardian of a minor can accept the gift for him, although he cannot incur an obligation. The acceptance of gift must be during the lifetime of the donor and if the donor dies before acceptance, there cannot be a gift. However, if the donor dies after acceptance of the gift, but before the deed is registered, the transfer may be completed by registration after the death of the donor. In *N.M Thakker v. P.M Thakker* it was held that the execution of a registered gift deed, acceptance of the gift and delivery of the property together make the gift complete.

How gift of transfer is effected?

For the purpose of making a gift of immoveable property, the transfer should be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery. Such delivery may be made in the same way as goods sold may be delivered. Hence gift of immovable property is compulsorily registerable under the Registration Act, 1908. In *Gomtibai v. Mattula* it was held that mere intention to give away the property is not enough to effect the transfer of gift. There has to be a registered gift deed in order for the gift to be complete in the eyes of law.

Gift of movable property

Gift of movable property can be made by alternative modes of transfer namely, registered deed and delivery of possession.

In case of delivery, the donor should have done all that he can, to put the subject matter of the gift within the power of the donee to obtain possession. A valid gift must ordinarily be followed by possession.

Gift deeds transferring actionable claims like shares, insurance policies have been held to be valid.

Mere entries in accounts books in favour of the wife or where money is deposited in bank but the certificate is retained by the donor is not gift as there is no delivery of the subject matter of gift, but a transfer from the account of the donor to that of the donees will make it a valid gift.

Specimen Models of Gift Deeds

DEED OF GIFT OF MOVABLE PROPERTY

I, Mr/Mrs. ________________ residing at _______________________ do hereby make a gift of the ornaments and jewellery specified in the schedule herein under written to my daughter Miss _________ in consideration of natural love and affection on the occasion of her marriage.

____

Signed by the **DONOR**

____

Accepted by the **DONEE**

Witnesses

1 ____________________ 2 ____________________

DEED OF GIFT OF IMMOVABLE PROPERTY

THIS DEED OF GIFT is made on ______ day of _____________, 20____ at ________________________________

between

Mr. ________________ s/o _________________ residing at _____________________ hereinafter referred to as 'the DONOR' of the One Part

and

Mr. ________________ s/o _________________ residing at _____________________ hereinafter referred to as 'the DONEE', of the Other Part.

WHEREAS the DONOR is seized and possessed of the land and premises situated at _________________ and more particularly described in the Schedule hereunder written.

AND WHEREAS the DONEE is related to the Donor as _______________________.

AND WHEREAS the Donor desires to grant the said land and premises to the DONEE as gift in consideration of natural love and affection as hereinafter mentioned.

AND WHEREAS the DONEE has agreed to accept the gift as is evidenced by his executing these presents.

AND WHEREAS the market value of the said property is estimated to be Rs _______________.

NOW THIS DEED WITNESSETH that the DONOR without any monetary consideration and in consideration of natural love and affection, which the DONOR bears to the DONEE, doth hereby grant and transfer by way of gift the said land and premises situated at ____________________________________ and more particularly described in the Schedule hereunder written together with all the buildings, and structures thereon and all the things permanently attached thereto or standing thereon and all the liberties, privileges casements and advantages appurtenant thereto and all the estate, right, title, interest use, inheritance, possession, benefit, claims and demand whatsoever of the DONOR To Have And To Hold the same unto and to the use of the DONEE absolutely but subject to the payment of all taxes, rates, assessments, dues and duties now and hereafter chargeable thereon to the Government or Municipality or other Local Authority.

AND he the DONOR doth hereby covenants with the DONEE:

a. That the DONOR now has in himself, good right, full power and absolute authority to grant the said piece of land and other the premises hereby granted as gift in the manner aforesaid.

b. The DONEE may at all times hereafter peaceably and quietly enter upon have occupy, possess and enjoy the said piece of land and premises and receive the rents, issues and profits and rents thereof and every part thereof to and for his own use and benefit without any suit, lawful eviction, interruption, claim or demand whatsoever from or by the DONOR or his heirs, executors, administrators and assigns or any person or persons lawfully claiming or to claim by, from, under or in trust for the DONOR.

c. That the said land and premises are free and clear and freely and clearly and absolutely and forever released and discharged or otherwise by the DONOR and well and sufficiently saved, kept harmless and indemnified of and from and against all former and other estate, titles, charges and encumbrances whatsoever, had made, executed, occasioned or suffered by the DONOR or by any other person or persons lawfully claiming or to claim by from, under or in trust for the Donor.

d. AND FURTHER that the DONOR and all persons having or lawfully claiming any estate or interest whatsoever to the said land and premises or any part thereof from under or in trust for the DONOR or his heirs, executors. administrators and assigns or any of them shall and will from time to time and at all times hereafter at the request and cost of the DONEE do and execute or cause to be done and executed all such further and other acts, deeds, things, conveyances and assurances in law whatsoever for better and more perfectly assuring the said land and premises and every part thereof unto and to the use of the DONEE in the manner aforesaid as by the DONEE, his heirs, executors, administrators and assigns or counsel in law shall be reasonably required.

IN WITNESS WHEREOF the Donor as well as the Donee (by way of acceptance of the said gift) have put their respective hands the day and year first hereinabove written.

THE SCHEDULE ABOVE REFERRED TO

Signed and Delivered by the within named Donor ________________

Signed by within named DONEE ______________________

Witnesses

1 ______________

2 ______________

SALE DEED AND AGREEMENT TO SELL

A sale deed acts as the main legal document for evidencing sale and transfer of ownership of property in favour of the buyer, from the seller. Further, it also acts as the main document for further sale by the buyer as it establishes his proof of ownership of the property.

The sale deed is executed subsequent to the execution of the sale agreement, and after compliance of various terms and conditions detailed in the sale agreement as agreed upon between the buyer and the seller.

The sale deed is the main document by which a seller transfers his right on the property to the purchaser, who then acquires absolute ownership of the property. It is also referred to as the conveyance deed.

The buyer should ensure the title of the seller before the execution of the sale deed. It should be checked whether there is any charge or encumbrance on the property and whether the purchaser is purchasing the property subject to such encumbrance. If not, then the seller needs to repay the loan and get the property papers cleared of the encumbrances. The purchaser should verify the encumbrance status from the registrar's office.

Further, subject to the agreement between the parties, all statutory payments like cess, property tax, water charges, electricity charges, society charges, maintenance charges etc should be paid by the seller before the execution of the sale deed. The seller should obtain the requisite clearances, approvals and permissions to transfer or sell the property prior to execution of the sale deed.

On completion of all formalities, a sale deed is prepared. This is the main document for transfer of ownership of property. The deed is executed by all the parties concerned. All pages of the deed are to be signed. The deed should be witnessed by at least two witnesses giving their full names, signatures and addresses. The sale deed of immovable property needs compulsory registration at the jurisdictional sub registrar office.

Specimen formats of Agreement for Sale and Sale Deed

SPECIMEN AGREEMENT FOR SALE OF HOUSE

This agreement made at________________ on this______ day of ___________20____

between

_________________, son of __________________, and resident of _____________________________ (hereinafter called the seller) of the one part

and

________________, son of __________________, resident of _________________ (hereinafter called the purchaser) of the other part:

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. That the seller agrees to sell and the purchaser agrees to purchase for the sum of Rs _____________ (Rupees _____________) House No_____ owned and possessed by the seller as an absolute owner and situated on ________ and bounded as follows:

   North :

   South :

   East :

   West :

   containing by admeasurement _______________ square metres of land together with all buildings, structures and outhouses and rights, easements and privileges enjoyed therewith.

2. That Rs. ____________ (Rupees ___________________________________) have been paid as earnest money by the purchaser to the seller by means of Cheque/Demand Draft No. ________ dated drawn on ______________________________________ and the balance of Rs ______________________ (Rupees __________________________________) shall be paid at the time of the execution of the sale-deed (or before the Registering Officer).

3. That the sale-deed shall be executed on or before the _____ day of ________________ 20_____ whereupon the purchaser shall be entitled to immediate possession of the property sold to him.

4. That the seller shall guarantee his sole and absolute title in the property to be sold and shall enter into all the usual covenants.

5. That the property sold is free from encumbrances [or that the property is subject to the following encumbrances (details of encumbrances) and shall be sold subject to them, or which shall discharged by the seller before the completion of the sale in favour of the purchaser].

6. That within two days from to-day the seller shall produce all the title-deeds of the house for inspection of the purchaser or of his nominee at __________________________ [place] and that in case the seller is unable to prove the marketable title that he has agreed to sell to the purchaser in the property agreed to be sold, it shall be open to the purchaser to cancel this agreement and to demand the return of the earnest money paid by him, and which shall be immediately returned by the seller.
7. That all taxes and expenses relating to the property up to the date of the completion of the sale shall be paid by the seller, and thereafter by the purchaser, and that all rents, profits and income up to that date shall be taken by the seller and thereafter by the purchaser.
8. That if the seller makes default in the performance of any of the conditions of this agreement, he shall pay Rs _____________ by way of compensation to the purchaser for such default; and if the purchaser makes default in the performance of any of the conditions to be performed by him under this agreement, then the seller shall be entitled to forfeit the whole of the earnest money of Rs____________ paid to him; and that the party not in default shall be further entitled at his discretion either to annul this agreement or to specifically enforce it, in addition to any remedy that may be open to him.
9. That the expenses of the sale shall be paid by the seller/ purchaser/by both parties in equal shares.
10. That the title deeds of the property shall be handed over to the purchaser by the seller at the time of the completion of the sale (or that the seller shall retain but will undertake to produce for inspection by the purchaser, whenever reasonably required to do so, the following title deeds which relate to the property sold along with the other property of the seller). (List of the title deeds____________)
11. That this agreement shall bind the above parties and their respective heirs, representatives and assigns.
12. That if there be any difference or dispute between the parties on any matter arising hereunder or claimed so to rise, the same shall be referred to the arbitration of whose award thereon shall be final and binding on the parties. In witness whereof the seller and the purchaser have here unto set and subscribed their respective hands /signatures in the presence of:

WITNESSES

1 __________________________ Signature of the seller ______________________________

2 __________________________ Signature of the purchaser_______________________

(Name, Signature and Details of the Signatories)

SPECIMEN AGREEMENT TO SELL PATENT RIGHTS

THIS AGREEMENT made on this ________ day of ___________ at _______________________

BETWEEN

________________ S/o __________ r/o ___________________________ hereinafter referred to as "the patentee" (which expression shall unless contrary to the context or meaning thereof including his successors, executors, administrators, legal representatives and assigns) of the one part.

AND

___________________S/o__________ r/o _________________ hereinafter referred to as "the assignee" (which expression shall unless contrary to the context or meaning thereof including his successors, executors, administrators, legal representatives and assigns) of the other part.

The patentee and the assignee hereinafter are collectively referred to as the "Parties".

WHEREAS

1. The patentee being inventor of __________ and holding patent rights (more specifically stated in schedule I hereto) in exclusively manufacturing/marketing of products of several descriptions/sizes in using the patented process.
2. The assignee has approached the patentee in buying all rights/interests of the patentee relating to the said patent rights. The patentee has consented to vend those rights to the assignee on terms/conditions hereinafter appearing.

NOW IT IS HEREBY CONSENTED AS FOLLOWS:

Agreement to Assign

That in consideration of a sum of Rs.___________ (the patentee hereby acknowledges its receipt) to payable by the assignee to patentee and a further payment of Rs.________, the inventor shall vend to assignee all his rights/interests with concerning the said patent rights.

Deed of Assignment

The patentee shall be executing an assignment deed and do all things as may be compulsory in vest owing said patent rights in the assignee.

Patentee's Agreement

The patentee hereby agrees that, as per assignment of patent rights to the assignee, he shall correspond all progress made by him in said invention to assignee and shall help assignee for doing all acts, deeds/things compulsory for procuring a patent for such progress which shall be bestowed in the assignee on the same term/conditions as if such progress had formed potion of original invention.

Assignee's Agreement

The assignee hereby agrees that, as per assignment of patent rights to him, he shall not do anything resulting in cancellation of said patent rights and shall, in the eventuality of such revocation, pay to patentee as liquidated compensation, the sum of Rs. __________, respectively.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the day and year first here-in-above written.

(The schedule I hereinafter referred to)

____

The Patentee

(Name, Signature and Details)

____

The Assignee

(Name, Signature and Details)

Witnesses

_________________________________ _________________________________

(Name, Signature and Details) (Name, Signature and Details)

ALTERNATE DISPUTE RESOLUTION (ADR) AGREEMENTS

The process by which disputes between the parties are settled or brought to an amicable result without the intervention of Judicial Institutions and without any trail is known as Alternative Dispute Resolution (ADR).

ADR offers to resolve all type of matters including civil, commercial, industrial and family etc., where people are not being able to start any type of negotiation and reach the settlement.

Generally, ADR uses neutral third party who helps the parties to communicate, discuss the differences and resolve the dispute.

It is a method which enables individuals and group to maintain co-operation, social order and provides opportunity to reduce hostility.

Alternative Dispute Resolution (ADR) Mechanisms

ADR is a mechanism of dispute resolution that is non adversarial, i.e. working together co-operatively to reach the best resolution for everyone.

ADR can be instrumental in reducing the burden of litigation on courts, while delivering a well-rounded and satisfying experience for the parties involved.

It provides the opportunity to "expand the pie" through creative, collaborative bargaining, and fulfill the interests driving their demands.

Types of ADR

Arbitration

The dispute is submitted to an arbitral tribunal which makes a decision (an "award") on the dispute that is mostly binding on the parties. It is less formal than a trial, and the rules of evidence are often relaxed. Generally, there is no right to appeal an arbitrator's decision. Except for some interim measures, there is very little scope for judicial intervention in the arbitration process.

Conciliation

A non-binding procedure in which an impartial third party, the conciliator, assists the parties to a dispute in reaching a mutually satisfactory agreed settlement of the dispute. Conciliation is a less formal form of arbitration. The parties are free to accept or reject the recommendations of the conciliator. However, if both parties accept the settlement document drawn by the conciliator, it shall be final and binding on both.

Mediation

In mediation, an impartial person called a "Mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Specimen Agreements for ADR Proceedings

AGREEMENT OF REFERENCE TO SOLE ARBITRATOR

This deed of agreement made on this _____ day of _________, 20___ at ____________________________

between

1. _________________, aged about __ years s/o _________________, r/o ___________________, hereinafter called the 1st party.
2. __________________, aged about __ years s/o ____________________, r/o __________________, hereinafter called the 2nd party.

WHEREAS the first and second parties have some dispute regarding management of the partnership business, being run by the parties.

AND WHEREAS both the parties have agreed upon to refer the dispute to one arbitrator duly appointed by the both parties.

NOW THIS DEED OF AGREEMENT WITNESSES AS UNDER: -

1. That both the parties have agreed upon to appoint ________ s/o ____________ r/o _________________________ as arbitrator.
2. That both the parties appoint ____________ as arbitrator.
3. That the arbitrator will go through the partnership deed and decide the dispute between the parties under the provision of the partnership deed.
4. That this deed shall be confined only up to the dispute of the management of the firm.

____

1st Party

(Name, Signature and Details)

____

2nd Party

(Name, Signature and Details)

Witnesses

____________________________________ ________________________________

(Name, Signature and Details) (Name, Signature and Details)

AGREEMENT OF REFERENCE TO COMMON ARBITRATOR

THIS AGREEMENT is made at __________________ on this _______ day of ____________________

BETWEEN

Mr. A ___________________ s/o ______________________ residing at _____________________ hereinafter referred to as the Party of the First Part

AND

Mr. B s/o ___________________ residing at ___________________________ hereinafter referred to as the Party of the Second Part.

WHEREAS by an Agreement (Building contract) dated the _____ day of ________, 20___ entered into between the parties hereto the Party of the First Part entrusted the work of constructing a building on his plot of land situated at... to the Party of the Second Part on the terms and conditions therein mentioned.

AND WHEREAS the Party of the Second Part has commenced the construction of the building according to the plans sanctioned by the Municipal Corporation and has completed the construction to the extent of the 1st floor level.

AND WHEREAS the Party of First Part has made certain payments to the Party of the Second Part on account but the Party of the Second Part is pressing for more payments which according to the Party of the First Part he is not bound to pay and, therefore the work has come to a standstill.

AND WHEREAS disputes have therefore arisen between the parties hereto regarding the interpretation of certain provisions of the said agreement and also regarding the quality of construction and delay in the work.

AND WHEREAS the said agreement provides that in the event of any dispute or difference arising between the parties the same shall be referred to arbitration of a common arbitrator if agreed upon or otherwise to two Arbitrators and the Arbitration shall be governed by the provisions of the Arbitration & Conciliation Act, 1996.

AND WHEREAS the parties have agreed to refer all the disputes regarding the said contract to Mr.______________ Architect, as common Arbitrator and have proposed to enter into this Agreement for reference of the disputes to the sole arbitration of the said Mr.____________________.

NOW IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:-

1. That the following points of dispute arising out of the said agreement dated____________ are hereby referred to the sole arbitration of the said Mr_____________ for his decision and award.
2. The points of dispute are:-
   a. Whether the Party of the Second Part has carried out the work according to the sanctioned plans and specifications.
   b. Whether the Party of the Second Part has delayed the construction.
   c. Whether the Party of the Second Part is overpaid for the work done up to now.
   d. Whether Party of the First Part is bound to make any further payment over and above the payments made up to now for the work actually done.
   e. All other claims of one party against the other party arising out of the said contract up to now.
3. The said Arbitrator shall allow the parties to file their respective claims and contentions and to file documents relied upon by them within such reasonable time as the Arbitrator may direct.
4. The said Arbitrator shall give hearing to the parties either personally or through their respective Advocates but the Arbitrator will not be bound to take any oral evidence including cross examination of any party or person.
5. The said Arbitrator shall make his Award within a period of four months from the date of service of a copy of this agreement on him by any of the parties hereto provided that, the Arbitrator will have power to extend the said period from time to time with the consent of both the parties.
6. The Arbitrator will not make any interim award.
7. The Arbitrator will have full power to award or not to award payment of such costs of and incidental to this arbitration by one party to the other as he may think fit.
8. Subject to the provisions of the Arbitration & Conciliation Act 1996 the award will be binding on the parties hereto.
9. The Arbitration shall subject to what is herein provided be governed by the provisions of the Arbitration and Conciliation Act, 1996.

IN WITNESS WHEREOF the parties have put their respective hands the day and year first hereinabove written.

SIGNED by the within named Signed by the within named

Mr. A ______________ Mr. B ________________

in the presence of:

1. __________________________________
2. __________________________________

MODEL ARBITRATION CLAUSES IN AN AGREEMENT

i. Every dispute, difference, or question which may at any time arise between the parties hereto or any person claiming under them, touching or arising out of or in respect of this agreement (deed) or the subject matter thereof shall be referred to the arbitration of XY, etc. or if he shall be unable or unwilling to act, to another arbitrator to be agreed upon between the parties or failing agreement to be nominated by __________ or, failing agreement to two arbitrators one to be appointed by each party to the difference (whether consisting of one or more than one person) and in case of difference of opinion between them to an umpire appointed by the said two arbitrators before entering on the reference and the decision of the arbitrator (or such arbitrators, or umpire as the case may be) shall be final and binding on the parties.

ii. In the event of any dispute, difference or question arising out of or in respect of this agreement or the commission of any breach of any terms thereof or of compensation payable thereof or in any manner whatsoever in connection with it, the same shall be referred to the Chamber of Commerce ______________ (or the Association of ______________) for arbitration as provided in Rules framed by the said Chamber (or Association) for the purpose. The decision or award so given shall be binding on the parties hereto.

iii. All disputes arising between the partners as to the interpretation, operation, or effect of any clause in this deed or any other difference arising between the partners, which cannot be mutually resolved, shall be referred to the arbitration of ________________ failing him to any other arbitrator chosen by the partners in writing. The decision of such an arbitrator shall be binding on the partners.

MODEL CONCILIATION CLAUSES

1. "Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with the Arbitration and Conciliation Act, 1996 as at present in force."

2. "If any dispute arises between the parties out of or relating to this contract, or in respect of any defined legal relationship associated therewith, the parties agree to refer the same to sole conciliator for amicable settlement. The conciliator shall be appointed by the parties by mutual consent. If the parties shall fail to arrive at an agreement, the conciliator shall be appointed by__________ (the name of any person or institution).

The conciliation shall be conducted in accordance with the Rules of Conciliation under the Arbitration and Conciliation Act, 1996.

MODEL MEDIATION CLAUSES

1. Where Mediator has already been identified

Agreement to Mediate Disputes - In the event a dispute shall arise between the parties to this [contract, agreement, transaction, etc.], the parties agree to participate in mediation in accordance with the mediation procedures of ____________ before pursuing other remedies. The parties agree to share equally in the costs of the mediation. The mediation shall be administered by the offices of _________________. Mediation involves both sides of a dispute meeting with each other and an impartial mediator to attempt to reach a voluntary and mutually satisfactory agreement that resolves the dispute. In mediation, the mediator(s) will facilitate discussions, negotiations and procedures but will not offer independent analyses, opinions or judgments. Mediation involves no formal court procedures or rules of evidence, and the mediator does not have the power to render a binding decision or force an agreement on the parties.

The parties further agree to share equally the costs of the mediation, which costs will not include costs incurred by a party for representation by counsel at the mediation.

2. Where Mediator has not been identified in advance of dispute

Agreement to Mediate Disputes - In the event that any dispute arises between the parties in relation to this Agreement, or out of this Agreement, and the dispute is not resolved by negotiation, the parties agree to submit the dispute to mediation. The parties further agree that their participation in mediation is a condition precedent to any party pursuing any other available remedy in relation to the dispute. Any party to the dispute may give written notice to the other party of his or her desire to commence mediation, and a mediation session must take place within [30] days after the date that such notice is given. The parties must jointly appoint a mutually acceptable mediator. If the parties are unable to agree upon the appointment of a mediator within [7] days after a party has given notice of a desire to mediate the dispute, any party may apply to the __________________ (an organisation for mediation) or person agreed to by the parties in writing, for appointment of a mediator. The parties further agree to share equally the costs of the mediation, which costs will not include costs incurred by a party for representation by counsel at the mediation.

MEDIATION AGREEMENT

This is an Agreement between __________________ and _________________, (hereinafter refer to as parties) and hereinafter referred to as "Mediator", entered into on ________________(date)

WHEREAS the purpose of this agreement is to enter into mediation with the intent of resolving all issues regarding ____________________.

The parties and the mediator understand and agree as follows:

1. **Nature of Mediation**

   The Parties hereby appoint and retain _____________ as Mediator for their negotiations. The parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach an agreement in a collaborative, consensual and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that mediation is not a substitute for independent legal advice. The parties understand that the mediator's objective is to facilitate the parties themselves reaching their best agreement. The parties also understand that the mediator has an obligation to work on behalf of all parties and that the mediator cannot render individual legal advice to any party and will not render remedy nor arbitrate within the mediation.

2. **Scope of Mediation**

   The parties understand that it is for the parties, with the mediator's concurrence, to determine the scope of the mediation and this will be accomplished early in the mediation process.

3. **Mediation is Voluntary**

   All parties here state their good intention to complete their mediation by an agreement. It is, however, understood that any party withdraw from or suspend the mediation process at any time, for any reason or no reason. The parties also understand that the mediator may suspend or terminate the mediation, if the mediator feels that the mediation will lead to an unreasonable result, if the mediator feels that an impasse has been reached, or if the mediator determines that he can no long effectively perform his facilitative role.

____

1st Party

(Name, Signature and Details)

____

Mediator

(Name, Signature and Details)

____

2nd Party

(Name, Signature and Details)

Witnesses

_________________________________ _____________________________

(Name, Signature and Details) (Name, Signature and Details)

Specimen Mediated Settlement Agreement

This Mediated Settlement Agreement is executed on this ______ day of ________, 2024 at New Delhi by and between

________________, maintaining its Registered Office at _______________________________________ (hereinafter referred to as the "FIRST PARTY")

and

_________________ S/o ____________________ residents of _______________________________ (hereinafter referred to as the "SECOND PARTY")

WHEREAS pursuant to agreement dated ________________, disputes relating to ____________,______________ and _______________ has arose between the parties.

WHEREAS by virtue of the above said agreement, the parties mutually agreed to settle their dispute through Mediation by entering into a separate Mediation agreement.

WHEREAS both the parties have appointed Mr. _______________ as Mediator for conduct of the proceedings.

WHEREAS the parties have now settled the disputes in the mediation proceedings held on ________, ___________ and _____________.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. The parties to this agreement accepts and agrees to the terms, conditions and clauses, as full and final settlement of the claims made by first party against the second party pertaining to matter indicated in mediated settlement agreement dated ________________. However, any clause of this agreement should not be treated as admission of facts of dispute.
2. The second party agrees to pay Rs. ________________/- by _____________ (date) for the 100 computers machines delivered by the first party during the duration between ____________ and ________________.
3. The first party agree to provide Annual Maintenance of the above said 100 computers free of cost for a period of 3 years starting from ____________ to _____________.
4. The first party shall made available one of its employee during the office hours of Second Party. The employee of first party shall be entitled to 2 Earned Leaves Per month application of which should be made to Second Party 24 hours in advance and 1 Casual Leave per month that may be taken in case of exigency and 24 Sick Leaves per year.
5. The payment shall be made by second party to the first part by online transfer in the Bank accounts of later of by account payee the cheque in the name of "______________".
6. The parties agree that the obligations of First Party under the settlement agreement are fulfilled discharged on making the full and final payment under clause 2 of this Agreement to the Second Party before ___________(Cut off date for making Payment).
7. The parties agree that unpaid amount after ________ (Cut off date for making Payment) shall bear interest from the date such payment was due until paid at a rate 10% compounded quarterly from time to time.

8. The parties agree that there shall be no further penalty or claim made pertaining to this transaction between the parties.
9. It is agreed between the parties that all the liabilities of the Second Party for payment as mentioned in the letter of possession dated 27.05.2016 are inclusive in the above agreed amount of Rs.25 LACS and no other payment whatsoever would be payable by the Second Party after payment of settled amount except interest for delayed payment as detailed herein above as also the maintenance charges with effect from 1.8.2021.
10. The parties agrees that parties shall pray the Hon'ble Court for a suitable adjournment of proceedings so that the parties can ensure compliance of the terms of this agreement and thereafter jointly apply to the Hon'ble Court for disposal proceedings.

It is agreed between the parties that the parties shall pray to the Hon'ble Court for a suitable adjournment of both the appeals of the two appeals as aforesaid.

In witness whereof the Bank, through its authorised officer has set its hand and stamp on this _____ day of March, 2023 at ____________________.

______________________________	____________________________________
1st Party	2nd Party
(Name, Signature and Details)	(Name, Signature and Details)

Mediator

____

(Name, Signature and Details)

EMPLOYMENT CONTRACTS

Employment agreement is an agreement that is entered into between two parties, i.e. the employer and employee. It is a document that describes the responsibilities and duties expected of an employee. It also describes the profile of the job and the title. The document ensures that the employee knows his place in the organisation and what is expected of him.

Employment agreements should be created in a way that is just and fair for all the employees. If this is followed, employees will do their tasks and responsibilities well and without any negative emotions toward their employers. Usually employment contracts contain only vague references to the "policies and procedures to which the employee will be bound".

The employer should provide the employee with all of the company policies and other documents that relate to the contract or are referred to in the contract.

Following are the usual contents of an employment agreement:

1) Name of the parties involved
2) Starting date of employment
3) Title and description of the job
4) Location of work
5) Hours of work
6) Probationary period

7) Salary
8) Restrictive terms
9) Holidays
10) Other information like deductions, permissible expenses, notice period etc.

EMPLOYMENT AGREEMENT

Certain important issues that need to be taken care of before finalizing the employment agreement are given hereunder:

- Identify the long term requirement of employees.
- Identify the workmen and employees not covered under definition of workmen, respectively.
- Local laws of the State should be borne in mind while drawing up the contracts.
- Issue appointment letters which clearly define the employment terms and conditions.
- Employment contracts, where necessary, should be put in place with clauses for wages, benefits, non-compete, confidentiality, term, termination etc.
- Depending on the requirement, use fixed term contracts for workmen.
- The terms and conditions of the employment should be clearly explained to employees before execution and should be drafted without any ambiguity.

Specimen format of Employment Agreement

AGREEMENT FOR EMPLOYMENT

An AGREEMENT made on this _____ day of _________, 20__

BETWEEN

____________________________________ (Name of Company) represented by its Managing Director ______________________ (hereinafter called the 'Employer" of the One Part

AND

______________________________ (Name of the Employee & his details) (hereinafter called the "Employee" of the Other Part.

WHEREAS

1. The Employer is engaged in the business of ____________________ and maintains business premises at ____________________________________.
2. The employer wants to appoint a suitable person to work as _________________ for his business concern;
3. The Employee, the party of the Other Part, has agreed to serve as _______________________ for the business concern on the terms and conditions hereinafter set forth.

NOW THIS AGREEMENT WITNESSED AND THE PARTIES HERETO AND HEREBY AGREE AS FOLLOWS:

1. AGREEMENT TO EMPLOY AND BE EMPLOYED

The Employer hereby employs the Employee as ______________ at _____________________ and the Employee hereby accepts and agrees to such employment.

2. DESCRIPTION OF EMPLOYEE'S DUTIES

Subject to the supervision and pursuant to the orders, advice, and direction of the Employer, the Employee shall perform such duties as are customarily performed by one holding such position in business concern. The Employee shall additionally render such other and unrelated services and duties as may be assigned to him from time to time by employer.

3. MANNER OF PERFORMANCE OF EMPLOYEE'S DUTIES

The Employee shall at all times faithfully, industriously, and to the best of his/her ability, experience, and talent, perform all duties that may be required of and from him/her pursuant to the express and implicit terms hereof, to the reasonable satisfaction of employer. Such duties shall be rendered at the abovementioned premises and at such other place or places as employer shall in good faith require or as the interests, needs, business, and opportunities of employer shall require or make advisable.

4. DURATION OF EMPLOYMENT

The term of employment shall commence on ______________ and continue till such date the Employee works in the business concern subject, however, to prior termination as provided in Clause 9 hereof or by resignation by the Employee. In case of resignation, the Employee shall give one month prior notice to the Employer and on failure to do so, shall forego his salary for the notice period.

5. REMUNERATION

The Employer shall pay a salary of _________________ to the Employee for the services rendered to the business concern. The details of the salary are mentioned in Annexure A of the document. In addition to the foregoing, the employer shall also reimburse the expenses incurred by the Employee while travelling for and on behalf of the Employer pursuant to the employer's direction.

6. EMPLOYEE'S LOYALTY TO EMPLOYER'S INTEREST

The Employee shall devote all his time, attention, knowledge, and skill solely and exclusively to the business and interests of the Employer, and the Employer shall be entitled to all benefits, emoluments, profits, or other issues arising from or incident to any and all work, services, and advice of the Employee. The Employee expressly agrees that during the term hereof he will not be interested, directly or indirectly, in any form, or manner, as partner, officer, director, stockholder, advisor, employee, or in any other form or capacity, in any other business similar to the employer's business or any allied trade, except that nothing herein contained shall be deemed to prevent or limit the right of employee to invest any of his surplus funds in the capital stock or other securities of any corporation whose stock or securities are publicly owned or are regularly traded on any public exchange.

7. NON-DISCLOSURE OF BUSINESS INFORMATION

The Employee will not at any time, in any form or manner, either directly or indirectly divulge, disclose, or communicate to any person, firm, or corporation in any manner whatsoever any information of any kind, nature, or description concerning any matters affecting or relating to the business of employer, including, without limitation, the names of any its customers, the prices it obtains or has obtained, or at which it sells or has sold its products, or any other information concerning the business of employer, its manner of operation, or its plans, processes, or other date of any kind, nature, or description without regard to whether any or all of the foregoing matters would be deemed confidential, material, or important.

The parties hereby stipulate that, as between them, the foregoing matters are important, material, and confidential, and gravely affect the effective and successful conduct of the business of employer, and its good will, and that any breach of the terms of this section is a material breach of this agreement.

8. LEAVE

The Employee will be entitled for one day leave for a completed month of service. Apart from this the employee will also be entitled to medical leave of 15 days in a year subject to submission of medical certificate in case the medical leave period exceeds three days.

9. TERMINATION OF SERVICE

i. The Employer shall terminate the services of the Employee without any previous notice, if the employer is satisfied based on medical evidence that the employee is unfit and is likely for considerable period to continue to be unfit by reason of ill health for discharge of his/her duties.

ii. The Employer shall terminate the services of the Employee without any previous notice, if the Employee is found guilty of any in-subordination, intemperance, moral turpitude or other misconduct or of any breach or non performance of any of the provisions of these conditions, or if otherwise found unsuitable for the efficient performance of his /her duties.

10. SETTLEMENT OF DISPUTE

Any claim or controversy that arises out of or relates to this agreement, or the breach of it, shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and relevant labour legislations.

11. WAIVER OR MODIFICATION EFECTIVE ONLY IN WRITING

No waiver or modification of this agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid.

12. GOVERNING LAW

This agreement and performance hereunder and all suits and special proceedings hereunder shall be construed in accordance with the laws of the State of ______________, India.

13. BINDING EFFECT OF AGREEMENT

This agreement shall be binding on and inure to the benefit of the respective parties and their respective heirs, legal representatives, successors, and assigns.

IN WITNESS WHEREOF

On behalf of the party of the ONE PART and by the party of the OTHER PART have hereto and hereby set their hands the day, month and year above mentioned:

____

1. Signature of the Party of the ONE PART (Employer)

____

2. Signature of the Party of the OTHER PART (Employee)

In the presence of

1. ______________________ (Name, designation and address)
2. ______________________ (Name, designation and address)

SETTLEMENT AGREEMENTS

A settlement agreement is a legal contract that resolves the disputes among all parties by coming to an agreement. It is a legal document where all parties in a court case, in civil law, agree to an outcome of any judgment being made in advance.

Usually, in settlement agreements, there is no need for a long court case which saves the clients both time and money. Settlement agreements are formed through mediation rather than through a trial. However, the judge will ultimately make the decision to approve the settlement after one is reached. Settlement agreements allow all parties to be hard and be satisfied with the outcome.

What is the Purpose of a Settlement Agreement?

If you are contemplating a way to settle your dispute without having to go to court, drafting a settlement agreement may be one of your legal options. With this type of agreement, one party must complete an action or pay a certain amount in exchange for the other party's promise to stop legal proceedings. Here are some situations in which a settlement agreement can apply:

- Any property damage claim;
- Mediation/Conciliation Settlement Agreements;
- Corporate Settlement Agreements;
- Family Business Settlement; and
- Employment disputes.

With any settlement agreement, there first needs to be negotiations in order to agree on certain provisions. A mediator is useful to agree on a factual account of the situation if necessary. In some corporate settlements, one party may only agree to settle if no wrongdoing or liability must be admitted. Some settlement agreements may also have conditions, such as how long a party has to fulfill his or her contractual obligations. Therefore, you must agree on whether all current and future claims are resolved by this agreement or whether it fulfills only a single claim or lawsuit.

How Can You Prepare for a Successful Settlement Agreement?

Understanding the potential terms and researching them will get you ahead in the settlement agreement process. You can start by looking at any terms that would assist the case in the mediation process.

For example, an insured claim being resolved by settlement agreement usually involves payment in exchange for release of legal liability. For these cases, a minimum of preparation requires consideration of whether payment will be made as a lump sum or in a series of payments. In addition, the scope of the claims being asserted and any releases must be considered.

Specimen of Settlement of Family Business

Settlement of Family Business

This Deed of Family Arrangement is executed on this _________________ in the year 2020

BETWEEN

A B S/o MN aged ______ years, occupation ___________________ r/o _________________________________ (hereinafter called as the first party)

AND

CD S/o XM aged ______ years, occupation and r/o _________________ (hereinafter called as the second party)

WHEREAS

(1) The first party has started and carried out the business and undertaking described in Schedule 'A' by his own initiative and efforts with his own capital and funds.

(2) The second party, who is son of the pre-deceased son of the first party and residing with him under the care and parentage of the first party and assisting him in conduct of the aforesaid business for which he was being paid share in profit. The second party thus having contributed his labour and skill for the development of the business rendered valuable services for the same and rendered himself entitled for an equal share in the said business. It has been settled and decided to distribute the business amongst the parties so also the properties. The first party shall hold the share in business and properties described in Schedule 'B' and the second party shall hold the share in business and properties described in Schedule 'C'.

(3) The movable and immovable properties, which is also described in Schedule 'A' have been acquired by the first party out of the funds of the said business in his name and for his use and benefits

NOW THIS DEED WITNESSETH AS FOLLOWS :

1. The second party shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'C' without any demand or claim by the first party any account whatsoever for which, he has expressly granted, conveyed, transferred and assigned by the first party.
2. The business and properties have been distributed amongst the parties to this deed. It is hereby decided and declared that the first party hereinafter shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'B' and the second party shall not interfere in the same and he has relinquished his rights in the said part of business and properties described in Schedule 'A'.

IN WITNESS WHEREOF the parties to this DEED have put and subscribed their respective hands in presence of witnesses on this _______ day of ______________ in the year ________ at ____________________.

____

1. Signature of the 1st Party

____

2. Signature of the 2nd Party

Witnesses

1. ______________________ (Name, designation and address)
2. ______________________ (Name, designation and address)

DRAFTING OF BYE-LAWS OF SOCIETIES

Society

A society may be defined as an association of persons united together by mutual consent to deliberate, determine and act jointly for same common purpose.

When a charitable organisation intends to have an open participation of large number of people in its functioning and decision making, it must be registered as a Society. Societies have been envisaged as welfare and charitable associations of people having a broad based membership and comparatively more democratic and transparent set up as compared to such set ups as public charitable trusts.

According to Section 20 of the Societies Registration Act, 1860, the following societies can be registered under the Act: 'charitable societies, military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collection of natural history, mechanical and philosophical inventions, instruments or designs.' The main instrument of any society is the memorandum of association and rules and regulations. All promoters should sign each page of the memorandum and the signature should be witnessed by competent officers/professionals with their rubber/official stamp and complete address.

The Memorandum should contain name, registered office, area of operation, objects, name of members of governing body and names of promoters. The Rules and Regulations should include all the provisions that would regulate functioning of the proposed Society; it should comprise membership, powers and responsibilities of office-bearers, meetings, quorum of meetings, termination of membership, operation of bank account and financial year, procedure of dissolution or merger of Society if so required, and other general rules required to manage the society.

According to the provisions of Societies Registration Act, 1860, minimum seven or more adult persons can form a Society. For a national level Society eight persons from seven different states would be required as promoters. An authorised person from among the promoters must apply to the concerned Registrar with preferably three alternative names of the proposed Society so as to avoid any inconvenience if the envisaged name has already been allotted to some other Society. Individuals (excluding minors but including foreigners), partnership firms, companies and registered societies are eligible to form a Society.

Registration can be done either at the state level (i.e., in the office of the Registrar of Societies) or at the district level (in the office of the District Magistrate or the local office of the Registrar of Societies).

A society registered under the Act enjoys the status of a legal entity apart from the members constituting it. A society so registered is a legal person just as an individual but with no physical existence. As such it can acquire and hold property and can sue and be sued. The society should be registered under the Act to acquire the status of juridical person.

When the society is registered, it and its members become bound to the same extent, as if each member had signed the memorandum. A society, registered under this Act, must confine its activities to the sphere embraced by its objects. An unregistered society cannot claim benefits under the Income-tax act.

All societies in India have to be registered under the Societies Registration Act 1860. By and large, the registration and filing procedures are similar in all the states. The only difference is that in some states there is a little more paperwork than the others.

Specimen format of Memorandum of Association and Rules and Regulations of Charitable Society

MEMORANDUM OF ASSOCIATION OF ____________________ CHARITABLE SOCIETY

1. Name of the Society: The name of the society shall be ________________________.
2. Registered Office: Registered office of the society shall remain in the ________ (Mention the state) and at present it is at the following address: ____
3. Aims and Objects: The aims and objects for which the society is established are as under:
   (a)
   (b)
   (c)
   (d) and so on........
4. Governing Body: The names, addresses, occupation and designation of the present members of the

governing body to whom the management of the society is entrusted as required under the Societies Registration Act, 1860, are as follows:

S. No.	***Name (full, in capital)***	***Address***	***Occupation***	***Designation in Society***
1.				
2.				
3.				
4.				
5.				
6.				
7. And so on				

5. Desirous person We the undersigned are desirous of forming a society namely "_______________" under the Societies Registration Act, 1860 in pursuance of this Memorandum of Association of the Society.

S. No.	***Name (full, in capital)***	***Address***	***Occupation***	***Designation in Society***
1.				
2.				
3.				
4.				
5.				
6.				
7. And so on				

All the incomes, earnings, movable, immovable properties of the Society shall be society utilized and applied towards the promotion of its aims and objects only as set forth in the Memorandum of Association and no profit on there of shall be paid or transferred directly or indirectly by way of dividends, bonus, profits or in any manner whatsoever to the present of past members of the Society or to any person claiming through anyone or more of the present or the past members. No member of the Society shall have any personal claim on any movable or immovable properties of the Society or make any profits, whatsoever, by virtue of his membership.

Attested the signatures from No. 1 to 7 (or more) Signatures of Two witnesses other than the members of the society with Addresses

Signature of the Attesting Officer with Official Seal

Certified that this is the true and correct copy of the Memorandum

Signatures of any three members of the Governing Body

President **Secretary** **Treasurer**

RULES AND REGULATIONS OF _____________ CHARITABLE SOCIETY

1. NAME OF THE ASSOCIATION:
2. ADDRESS OF THE ASSOCIATION:
3. MEMBERSHIP:
   a. The association membership fee shall be follows:-
      i. Life Membership fees Rs._______________
      ii. Annual Membership Rs.________________
      iii. Monthly subscription Rs.______________
   b. The admission fee for each member shall be Rs.________ only.
   c. Any person who has attained above the age of 18 years will be allowed to become a member of the association. All the members of the association is eligible to vote and contest to the managing committee in the General Body Meeting.
   d. If the subscription of the member is in arrears for more than three months without satisfactory explanation to the General Secretary, his/her name will be removed and the Executive Committee may reconsider his/her application for re-admission subject to all the arrears including the admission fee being paid. The termination of membership maybe on death, the member acting against the objects of the association, unsound mind and other reasons stated by Executive Committee.
4. INFORMATION REQUIRED BY THE MEMBERS:-

   Any member of the association may apply to the General Secretary for any information as may be required or any matter of the subjects or rules and regulations of the association.
5. GENERAL BODY AND OTHER MEETINGS:-
   a. The report of the Management of the previous years and the audited accounts for the present period and proceedings year shall be discussed and submitted for confirmation.
   b. A general body meeting of the association will be held annually during the month of ________.
   c. An Executive committee consisting of ________members shall be elected in the general body meeting once in a year.
   d. An authorised officer bearer may call for a general body meeting for which 21 days notice shall be given to the members.
   e. The executive committee shall generally meet once a month for which notice of 7 days shall be given to the members by the General Secretary.
   f. Voting shall be conducted by show of hands or secret Ballot.
   g. 21 days clear notice for the Annual General Body meeting and 21 days notice for a special General body meeting shall be given.
   h. A special General Body Meeting shall be conveyed as per the provisions of the Societies Registration Act, 1860.
6. QUORUM:- The quorum of the General body meeting shall be 1/3 rd of the total membership of the Association.

7. ACCOUNTS:-
   - a. Official year: - The official year of the Association shall be from 1st April to 31st March every year.
   - b. The assets and liabilities and the balance sheet of the Association shall be laid before the Annual General body Meeting for confirmation.
   - c. Such a balance sheet and the List of Committee Members shall be filed with the Registrar of Societies as per the provisions of the Societies Registration Act, 1860.
8. AUDITOR:-

   An auditor shall be appointed annually and the remuneration shall be fixed by the members in the Annual General Body meeting.
9. EXECUTIVE COMMITTEE:-
   - a. To ensure and promote the primary aim and objectives of the academy.
   - b. To publish Annual report/accounts.
   - c. To operate funds and manage the property of the association and to present the duly audited accounts at annual general body meeting.
   - d. To form regional centres wherever deemed fit/feasible.
   - e. In the event of any office bearer laying down office for whatever reasons, the managing committee can co-opt any member consider suitable for the office for the remaining period of the tenure or till elections are held.
   - f. To ensure that all monetary transactions are through objectives of the association.
   - g. To ensure that all monetary transactions are through objectives of the Association.
   - h. May decide to expel a member of managing committee or a member of the association in case anyone is convicted or any criminal offence, or prove insanity or any member's action in contravention to the Bye-laws.
   - i. Managing Committee shall have power to appeal and raise funds and fulfill all formalities incumbent upon it.
   - j. To accept from Government, Non-Government, Local bodies, organisation and individuals Grants, donations, Subscriptions or any property movable/immovable for furtherance of the objectives of the Association.
   - k. At any meeting of the Executive committee each member present will have one vote except the president who shall have in addition a casting vote. Voting may be by raising of hands or secret ballot.
   - l. Executive committee may appoint committee, Sub-Committee with such powers as deemed fit by this body for the purpose that is commensurate with the objectives of the society. The committee, Sub-Committee may co-opt persons who are members of the Association.
   - m. Executive committee may invite to their meetings not more than two specialists/experts who may be non members of the Association whose presence with the deliberations is considered useful.
   - n. Executive Committee shall arrange for the publication in any manner, documents as may be considered fit in the furtherance of its objectives.
   - o. To retain, appoint, promote, dismiss any employees for managing and functioning of the Association and to regulate their terms and conditions of employment including remuneration.
   - p. To make the rules and bye-laws and get approval.

10. Any vacancy that may arise in the Executive Committee may be filled in by the remaining committee members.
11. Any member of the executive committee being absent for three successive meetings without proper cause shall cease to be a member of the executive committee. However he/she is eligible to be re-elected.
12. The executive committee is to meet every month or earlier if there is any business to consider and General Secretary shall convene such meetings with 1/3rd quorum.
13. PROVISION:- Provided that no amendments to the memorandum of association, rules and regulations of the association shall be made which may prove to be repugnant to the provisions of the Income Tax Act 1961 as amended from time to time. Further any amendment carried out shall be forthwith reported to the Commissioner of Income Tax.
14. The Executive committee in its meeting shall consider all the questions affecting business that may be of interest to the members of the association and they shall inform and circulate any information which may be of use to the members.
15. There shall be maintenance of accounts of the Association. The accounts shall be duly audited by a Chartered Accountant. Every year the Accounts shall be closed by 31st March every year.
16. The funds of the association shall be invested in the modes specified under the provisions of the Income Tax Act, 1961 as amended from time to time.
17. DISSOLUTION:- In the event of dissolution or winding up of the Society the assets remaining as on the date of dissolution shall under no circumstances be distributed among the members of the managing committee/Governing body but the same shall be transferred to another Charitable Society/Association whose objects are similar to those of this Society and which enjoys recognition u/s 80G of the Income tax Act 1961 as amended from time to time.
18. The association formed shall be irrevocable.
19. The benefits of the association shall be open to all irrespective of the caste creed or religion.
20. The funds and the income of the association shall be solely utilised for the achievement of its objectives and no portion of its shall be utilised for payments to the members by way of profit, interest and dividends.
21. Alteration of amendment of the memorandum of association shall be made as per the provisions of the Societies Registration Act, 1860.
22. Change of Name, Rules and regulations shall be made as per the provisions of the Societies Registration Act, 1860.
23. The working hours of the association shall be from:- Morning: 10.00 A.M. to Evening: 7.00 P.M.
24. For matters which have not been specified provided for therein above, the provisions of the Societies Registration Act, 1860 and the rules made there under shall apply.
25. EXECUTIVE POWERS OF THE COMMITTEE: The administration and management of the association shall vest in the executive committee consisting of 7 members including President, General Secretary of the association.

PRESIDENT:- a. He / She shall be in over all charge of the association and the General body meetings. All the policies and programmes shall be formulated and implemented only through him/her. b. He / She shall operate bank account jointly with the General Secretary.

GENERAL SECRETARY:- a. He / She shall call for all meetings of the General body meeting as and when deemed necessary and the General body meetings and the Special body meeting as per the rules with the previous approval of the president and maintain the minutes book and record of all the proceedings of the meetings. b. He / She shall be the correspondent of the association and shall be in-charge of the office with all the record of the association. c. He / She shall be the custodian of all articles and belonging both movable and immovable of the Association. d. He / She shall operate bank account jointly with the president.

S. No.	*Name (full, in capital)*	*Address*	*Occupation*	*Designation in Society*
1.				
2.				
3.				
4.				
5.				
6.				
7. And so on				

Signatures of any three members of the Governing Body

President **Secretary** **Treasurer**

DRAFTING OF STANDING ORDERS

The Act makes it obligatory for employers of an industrial establishment where 100 or more workers are employed to clearly define the conditions of employment, by way of standing orders/services rules and to make them known to the workmen employed. However in the N.C.T. of Delhi, the Act applies to an industrial establishment where 50 or more workmen are employed or were employed in the preceding 12 months.

The employer is required to prepare draft standing order, which he propose to adopt and submit the same to the Certifying Officers for certification. The employer is required to act in conformity with the certified standing orders in dealing with the day today affairs of the workmen. Certified standing orders have the force of the law like any other enactment.

ADMINISTRATIVE MACHINERY

All Deputy Labour Commissioners of the Labour Department have been appointed Certifying Officers for the purpose of certification of the proposed standing orders of the respective areas under their control. Industrial Tribunal-I is the Appellate authority under the Act.

PENALTY

The Act provides that in case the employer fails to submit the draft standing orders, a fine up to Rs. 5,000/- can be imposed and in case of contravention of the standing orders, a fine up to Rs. 100/- and in case of continuance of the offence, further fine up to Rs. 25/- for each such day can be imposed.

Draft Model Standing Orders

1. **Short title, extent and commencement.-**

(1) These Model Standing Orders may be called the Model Standing Orders for Service Sector, 2020;

(2) They extend to all States and Union territories within India to the industrial establishments employing three hundred or more number of workers who are working in the industrial establishments and which are covered under the Occupational Safety, Health and Working Conditions Code, 2020 (37 of 2020) and the rules made thereunder under the control of Central Government or the State Government engaged in service sector;

(3) These Standing Orders shall come into force on the day of its publication in the Official Gazette.

2. **Definition.-**

(1) In these Model Standing Orders, unless there is anything repugnant to the subject or the context,-

(a) "Aadhaar" means the Aadhaar referred to in Section 142 of the Code on Social Security, 2020 (36 of 2020);

(b) 'Code' means the Industrial Relations Code, 2020 (35 of 2020);

(c) 'Form' means a form set out in Schedule appended to these standing orders;

(d) 'Habitual' means with respect to indiscipline, a worker shall be habitual if the worker found guilty of any misconduct three or more times in preceding twelve months; and

(e) "Standing Order" with its grammatical variation and cognate expressions, means the standing order of these model standing orders.

(2) The words or expressions used in these model standing orders and not defined therein but defined in the Industrial Relations Code, 2020 (35 of 2020) shall have the respective meanings assigned to them in the definitions in the Code.

3. (1) **Classification of Worker.-** For the purposes of these standing orders, the workers are classified as below, namely:-

(a) Permanent;

(b) Temporary;

(c) Apprentices;

(d) Probationers;

(e) Badlis; and

(f) Fixed Term Employment.

(2) A Permanent worker is a worker who has been engaged on a permanent basis in an industrial establishment and includes any person who has satisfactorily completed a probationary period of six months in the same or another occupation in the industrial establishment including breaks due to sickness, accident, leave, lockout, strike (not being an illegal strike) or involuntary closure of the industrial establishment.

(3) A Temporary Worker is a worker who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period.

(4) Apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship under the Apprenticeship Act, 1961 (52 of 1961).

(5) A Probationer is a worker who is provisionally employed to fill a permanent vacancy in a post and has not completed six months 'service therein. The period of probation can be extended further period up to three months after assessing the performance of the probationer for the post, he has been appointed for. If a permanent employee is employed as a probationer in a new post he may, at any time during the probationary period of six months, be reverted to his old permanent post.

(6) A badli is a worker who is appointed against the post of a permanent worker or probationer who is temporarily absent.

(7) "Fixed term employment" means the engagement of a worker on the basis of a written contract of employment with the employer for a fixed period: Provided that—

(a) his hours of work, wages, allowances and other benefits shall not be less than that of a permanent worker doing the same work or work of similar nature;

(b) he shall be eligible for all statutory benefits available to a permanent worker proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute;

(c) he shall be eligible for gratuity, if he renders service under the contract for a period of one year; and

(d) for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to the worker at the rate of fifteen days' wages, based on rate of wages last drawn by the worker concerned as referred to in sub-section (2) of section 53 of the Code on Social Security, 2020 (36 of 2020).

Explanation.- For removal of doubt, it is clarified that the termination of service of a worker as a result of completion of tenure of fixed term employment shall not be included within the meaning of "retrenchment" as defined under clause (zh) of section 2 of the Industrial Relations Code, 2020 (35 of 2020).

4. Identity Badge or Card.-

(1) All workers belonging to any categories under the Code on Industrial Relations, 2020 (35 of 2020) shall be issued an identity badge or card bearing his full name, employee number, blood group, mobile number, if any, and a recent photograph.

(2) A worker should always wear his identity badge or card during the working hours of the industrial establishment and produce the same to the authorized security guard or personnel to allow him the right of entry and stay in the premises of the industrial establishment.

(3) Such identity badge shall not be transferable to any other persons or workers. Safe custody of the identity badges or cards shall be ensured by the concerned workers.

(4) Every Worker, who ceases to be in employment of the industrial establishment or is suspended from services, shall surrender his identity badge or card to the Department Head or the designated officer of the industrial establishment for such purpose.

5. Publication of Working Timings.-

(1) The periods of hours of work for all categories of workers shall be exhibited on the notice board or Electronic Notice Board and on the Human Resource Portal/IT Application of the industrial establishment, if any, from time to time in Hindi, English and in local language majority of workers in the industrial establishment are conversant. Provided that in case of IT Sector, the working hour shall be as per agreement or conditions of appointment between employer and workers.

(2) Any change in periods of hours of work, number of shifts, shift timings, work on all the days of the week with staggered weekly holidays system or like other matters, shall also be displayed on notice board or electronic notice board of the industrial establishment.

6. Publication of Holidays, Pay days and Wage rates.-

(1) Notices specifying the days observed by the industrial establishment as holidays, and pay days shall be posted on the Electronic notice board or notice board and website or Human Resource portal of the industrial establishment, if any.

(2) A list of national and Festival Holidays shall be displayed on the Electronic notice board or notice board and website or Human Resource portal of the industrial establishment, if any.

Explanation: If a worker is required to work on any Holidays, he/she shall be given benefits as per prevalent law(s) applicable to workers.

7. Publication of wage band.- Wage bands payable to all categories of workers shall be displayed on the Electronic notice board or notice board and website or Human Resource portal of the industrial establishment, if any in Hindi, English and local language majority of workers in industrial establishment are conversant.

8. Shift working:-

(1) More than one shift may be worked in a department or departments or any section of a department of the industrial establishment at the discretion of the employer. If more than one shift is worked, the worker shall be liable to be transferred from one shift to another. No shift working shall be discontinued without twenty one days' notice being given in writing to the workers prior to such discontinuance: Provided that no such notice shall be necessary if the closing of the shift is under an agreement with the workers affected or mutually agreed between employer and worker. If as a result of the discontinuance of the shift working, any worker is to be retrenched, such retrenchment shall be effected in accordance with the provisions of the Industrial Relations Code, 2020 (35 of 2020) and the rules made thereunder. If shift working is re-started, the workers shall be given notice and re-employed in accordance with the provisions of the said Code and the said rules.

(2) Whenever an additional shift is started, or shifts are restarted or discontinued or altered, twenty- one days prior notice, shall be given to the affected workers: Provided that no notice shall be required in case of emergent situation which requires change of shift or shift working, otherwise than in accordance with Standing Order, in consultation with Grievance Redressal Committee in pursuant of clause (c) section 40 of the Industrial Relations Code, 2020 (35 of 2020): Provided further that if there is an agreement between employer and worker regarding change of shift, then no prior notice is required to given by the management/employer. Provided also that no notice shall be required, if such change is effected in accordance with the orders of the Central Government or State Government, as the case may be, or in pursuance of any settlement or award as envisaged in clause (d) of section 40 of the Industrial Relations Code, 2020 (35 of 2020).

9. Notice of changes in shift working.–Any notice of discontinuance or of re-starting of a shift working required by this Standing Order, shall be in form II appended to these standing orders and shall be served in the following manner, namely :-

(a) The notice shall be displayed conspicuously by the employer on a notice-board or electronic notice board and Human Resource portal of the industrial establishment if any; and

(b) Where any registered trade union of workers exists, then, a copy of the notice referred to in clause (a) shall also be served electronically or by registered post to the Secretary of such union.

10. Work from home.- Subject to conditions of appointment or agreement between employer and workers, employer may allow a worker to work from home for such period or periods as may be determined by employer.

11. Attendance and Late Coming.–

(1) All workers shall be at work at the time fixed and notified under paragraph 5. Worker attending late will be liable for deduction provided for in the Code on Wages, 2019 (29 of 2019).

(2) All workers shall comply with the regulations related to hours of work for the time being in force.

(3) Workers shall register their attendance at the start of the shift and at the close of the shift after and before change of uniform, if any, respectively.

(4) Workers shall use identity card or biometrics or any other system as has been notified to register their attendance.

(5) No worker shall use or punch the Identity badge other that his own under any circumstances.

(6) Any worker, reporting late than the scheduled time for reporting shall not be permitted to enter his department or section, unless permitted by the express permission of the manager, or any other officer, duly authorized for such purpose.

(7) A worker shall be deemed absent, if he/she fails to attend duty, unless he has obtained written permission for such absence from the manager or the Officer authorized in this behalf.

(8) A worker who habitually comes late and remains absent will be liable to deduction of wages as provided under the Code on Wages, 2019 (29 of 2019).

12. Leave.–

(1) Holidays with pay will be allowed as provided for in the Occupational Safety, Health and Working Conditions Code, 2020 (37 of 2020), and other holidays in accordance with law, contract, custom and usage applicable.

(2) Leave cannot be claimed as matter of right.

(3) A worker who desires to obtain leave of absence shall apply to the employer or any other officer of the industrial establishment specified in this behalf by the employer at least seven days in advance from the date of proposed date of leave. The employer or any other officer of the industrial establishment, who is responsible for issuing the order, shall issue the same within a week of its submission or two days prior to the commencement of the leave applied for, whichever is earlier. If the leave has been applied and the leave is to commence on the date of the application or within three days thereof, then the worker shall mention the reason for late submission of application for leave. The order on such leave shall be given on the same day. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons there for shall be communicated to him in writing.

(4) Where the worker after proceeding on leave desires an extension thereof, he shall apply to the employer or the officer specified in this behalf by the employer, who shall send a written reply either granting or refusing extension of leave to the worker if his address is available and if such reply is likely to reach him before the expiry of the leave originally granted to him.

(5) Leave with wages and allowances shall be granted to all the workers in accordance with the law as applicable to the industrial establishment and under Standing Orders.

(6) No employee while on leave shall take up any employment or any vocation for profit or gain.

13. Casual Leave.- A worker may be granted casual leave of absence with or without pay not exceeding ten days in the aggregate in a calendar year. Such leave shall not be for more than three days at a time except in case of sickness. Such leave is intended to meet special circumstances which cannot be foreseen. Ordinarily, the previous permission of the head of the department in the industrial establishment shall be obtained before such leave is taken, but when this is not possible, the head of the department shall, as soon as may be practicable, be informed in writing of the absence from and of the probable duration of such absence.

14. Payment of Wages. –

(1) All payment including wages to the workers shall be paid by crediting in the bank account of worker on electronic mode or digital form. Intimation to the payment made to a worker shall be sent to him through SMS or e-mail or social media communication, such as, WhatsApp or by issuing a slip.

(2) Notice of wage period and payment date in Hindi, English, and regional language familiar to the majority of workers at a factory, shall be displayed on the notice board or electronic notice board and on the Human Resource portal of the industrial establishment, if any.

(3) Any wages, due to the worker but not paid on usual pay day on account of there being unpaid shall be paid by the employer on an unclaimed wage pay day in each week, which shall be notified on the notice boards as referred to in sub-paragraph (2); and

(4) All worker will be paid wages on a working day before the expiry of the seventh day after the last day of the wage period in respect of which the wages are payable.

15. Service Record:-

(1) Matters relating to service card, certification of service, change of residential address of workers and record of their age shall form part of service record and –

(i) Every industrial establishment shall maintain a service card in respect of each worker electronically or in manual form, wherein particulars of that worker shall be recorded with the knowledge of that worker in Form I. In case of manual maintenance of service card, the record shall be duly attested by an officer in this behalf together with date;

(ii) Every worker shall be entitled to a service certificate, specifying the nature of work, designation and the period of employment (indicating the days, months, years) at the time of discharge, termination, retirement or resignation from service to be issued by an employer;

(iii) A worker shall notify the employer immediately on engagement, the details of his permanent and local residential address, mobile number and digital communications details like e-mail address and thereafter promptly communicate the change in the same, if any. In case, the worker has not communicated to his employer the change in his residential address, his last known address shall be treated by the employer as his residential address for sending any communication;

(iv) Every worker shall indicate his exact date of birth to the employer or the officer authorized by him in this behalf, at the time of entering service in the industrial establishment. The employer or the officer authorized by him in this behalf may before the date of birth of a worker is entered in his service card, require him to supply,-

(a) his matriculation or school leaving certificate granted by the Board of Secondary Education or equivalent certificate granted by similar educational authority; or

(b) a certified copy of his date of birth as recorded in the registers of a municipality, local authority or Panchayat or Registrar of Births;

(c) a copy of Aadhaar; and

(d) in the absence of either of the aforesaid two categories of certificate, the employer or the officer authorised by him in this behalf may require the worker to supply, a certificate from a Government Medical Officer not below the rank of an Assistant Surgeon indicating the probable age of the worker: Provided that the cost of obtaining such certificate is borne by the employer.

(v) where it is not practicable to obtain a certificate from a Government Medical Officer, an affidavit sworn, either by the workman or his parents, or by a near relative, who is in a position to know about the workman's actual or approximate date of birth, before a first Class Magistrate or Oath Commissioner, as evidence in support of the date of birth given by him.

(2) The date of birth of a worker, once entered in the service card of the industrial establishment shall be the sole evidence of his age in relation to all matters pertaining to his service including fixation of the date of his retirement from the service of the industrial establishment. All formalities regarding recording of the date of birth shall be finalized within three months of the date of the appointment of a worker.

(3) Cases, where date of birth of any worker had already been decided before the date these standing orders come into force shall not be reopened under these standing orders. Note.- Where the exact date of birth of a worker is not available and the year of birth is only established, then, the 1st July of the said year shall be taken as the date of birth.

16. Confirmation.- The employer shall, in accordance with the terms and conditions stipulated in the letter of appointment, confirm the eligible worker and issue a letter of confirmation to him. Whenever, a worker is confirmed, an entry with regard to the confirmation shall also be made in his service card within a period of thirty days from the date of such confirmation.

17. Age of retirement.- The age of retirement or superannuation of a worker shall be such as may be agreed upon between the employer and the worker under a written agreement or as specified in a settlement or award which is binding on both the worker and the employer. Where there is no such agreed age, retirement or superannuation shall be on completion of fifty eight years of age by the worker.

18. Transfer.–

(1) There shall be a transfer policy of the industrial establishment and same shall be known to all workers. The details of transfer policy shall be available on the Human Resource (HR) portal.

(2) A worker may be transferred according to the transfer policy and exigencies of work from one shop or department to another or from one station to another or from one industrial establishment to another under the same employer: Provided that the wages, grade, continuity of service and other conditions of service of the worker shall not be adversely affected by such transfer: Provided further that a worker shall be transferred from one job to another, which he is capable of doing: Provided also that where the transfer involves moving from one State to another such transfer shall take place, either with the consent of the worker or where there is a specific provision to that effect in the letter of appointment and transfer policy in accordance with such provision and policy: Provided also that unless –

(a) reasonable notice is given to such worker, and

(b) reasonable joining time is allowed in case of transfers from one station to another and the worker concerned shall be paid traveling allowance including the transport charges and fifty per cent thereof to meet incidental charges, such transfer shall not be effected,

(c) The employer may, transfer, depute or assign a worker to any other assignment, team, department or office (whether in India or abroad) of the employer or any affiliates / client of the employer.

19. Medical aid in case of accidents.-

(1) Where a worker meets with an accident in the course of or arising out of his employment, the employer shall, at the employer's expense, make satisfactory arrangements for immediate and necessary medical aid to the injured worker and shall arrange for his further treatment, if considered necessary by the doctor attending on him.

(2) Wherever the worker is entitled for treatment and benefits under the Social Security Code, 2020 (36 of 2020), then, he shall be entitled for treatment and benefits under that Code. 20. Medical Examination.-

(1) Wherever the recruitment rule or any contract of appointment or Fixed Term Employment specify medical examination of a worker, on his first appointment, the employer shall at the employer's expense make arrangements for medical examination.

(2) All workers to be employed in the industrial establishment shall be required to clear the medical examination by the Medical Authority nominated by the industrial establishment for such purpose, at the time of first appointment.

(3) The industrial establishment may at any time direct any worker to undergo medical examination by any Medical Officer nominated to ascertain workers' fitness relatable to satisfactory performance of his job. The term "Medical Officer" shall have same meaning as it has in sub-section (1) of section 42 of Occupational Safety, Health and Working Condition Code, 2020 (37 of 2020).

(4) A worker who comes to know that he has contracted any infectious or contagious disease shall immediately notify the concerned Manager of such a happening and shall remain away of work until permitted to return on work by the Manager concerned and during such period, the worker shall be treated on leave to the extent of days he has leave with wages to his credit. Disciplinary action may be taken against a worker if he deliberately suppresses the fact of his suffering from an infectious or contagious disease and such a conduct on the part of the worker shall amount to misconduct within the meaning of these Standing Orders.

21. Secrecy.- No worker shall take any papers, books, drawings, photographs, instruments, apparatus, documents or any other property either in electronic form or physical form, of an industrial establishment out of the work premises except with the written permission of his immediate superior, nor shall he in any way pass or cause to be passed or disclose or cause to be disclosed any information or matter concerning the manufacturing process, trade secrets and confidential documents of the industrial establishment to any unauthorized person, company or corporation without the written permission of the employer.

22. Exclusive Service.- A worker shall not at any time work against the interest of the industrial establishment in which he is employed and shall not take any employment in addition to his job in the industrial establishment, which may adversely affect the interest of his employer, but, the employer may permit him to take up additional job, assignment with conditions or without conditions and the worker shall obtain prior permission of the employer.

23. Stoppage of work. –

(1) The employer may, at any time, in the event of fire, catastrophe, break-down of machinery or stoppage of power supply, disaster, pandemic, epidemics, civil commotion or other cause beyond his control , stop any section or sections of the industrial establishment, wholly or partially for any period or periods without notice.

(2) In the event of such stoppage during working hours, the workers affected shall be notified by notices put upon the notice board or electronic notice board or on the Human Resource Portal of the industrial establishment, if any, as soon as practicable, when work will be resumed and whether they are to remain or leave their place of work. The worker shall not ordinarily be required to remain for more than two hours after the commencement of the stoppage. If the period of detention does not exceed one hour the worker so detained shall not be paid for the period of detention. If the period of detention exceeds one hour, the workers so detained shall be entitled to receive wages for the whole of the time during which they are detained as a result of the

stoppage. In case of piece rate workers, the average daily earning for the previous month shall be taken to be the daily wage. No other compensation will be admissible in case of such stoppages. Wherever practicable, reasonable notice shall be given of resumption of normal work.

(3) In cases where workers are laid off for short periods on account of failure of plant or a temporary curtailment of production, the period of unemployment shall be treated as compulsory leave either with or without pay, as the case may be, but where workers have to be laid off for an indefinitely long period, their services may be terminated after giving them due notice or pay in lieu thereof.

(4) The employer may in the event of a strike affecting either wholly or partially any section or department of the industrial establishment close down either wholly or partially such section or department and any other section or department affected by such closing down, then, the fact of such closure shall be notified by notices put on the notice board or electronic notice board or on the Human Resource portal of the industrial establishment, if any, as soon as practicable. The workers concerned shall also be notified by a general notice, prior resumption of work, as to when work will be resumed.

(5) The workers may be laid off as per provisions of the Industrial Relations Code, 2020 (35 of 2020).

24. Termination of Employment.-

(1) This paragraph shall apply to an industrial establishment (not being an industrial establishment of seasonal character or in which work is performed intermittently) in which not less than three hundred workers, were employed on an average per working day in the preceding twelve months.

(2) Subject to the provisions of the Industrial Relations Code, 2020 (35 of 2020) and rules framed thereunder, for terminating employment of a permanent worker, prior notice of one month shall be given or the worker shall be paid wages in lieu of such notice period and in case of remaining workers as specified in sub-paragraph (3), the notice period shall be regulated as provided in that sub-paragraph.

(3) No temporary worker whether monthly rated, weekly rated or piece rated, and no probationer or badli or fixed term employment worker as a result of non-renewal of contract or employment or on its expiry, shall be entitled to any notice or pay in lieu thereof, if his services are terminated: Provided that the services of a temporary worker shall not be terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him in the manner specified in this behalf under these standing orders.

(4) Where the employment of any worker is terminated, the wages earned by him and other dues, if any, shall be paid before the expiry of the second working day from the day on which his employment is terminated.

25. Disciplinary action for misconduct.-

(A) (1) A worker may be suspended by the employer pending investigation or enquiry into complaints or charges of misconduct against him. Such investigation or enquiry, or where there is an investigation followed by enquiry, both the investigation and enquiry shall be ordinarily completed within ninety days from the date of suspension. The worker shall be paid subsistence allowance during the period of suspension which shall be subject to the worker not taking any employment elsewhere during the period of suspension.

(2) The amount of subsistence allowance payable to such worker shall be as under, namely:-

(a) at the rate of fifty percent of wages which the worker was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) at the rate of seventy-five per cent of such wages for the remaining period of suspension, if the delay in completion of disciplinary proceedings against such worker is not directly attributable to the conduct of such worker.

(3) For the purposes of this standing order, the following shall denote misconduct, namely:-

(a) theft, fraud, or dishonesty in connection with the employer's business or property;

(b) taking or giving of bribes or an illegal gratification whatsoever in connection with the employer's business or his own interests;

(c) willful insubordination or disobedience, whether alone or in conjunction with another or others, or of any lawful or reasonable order of a superior. The order of the superior should normally be in writing;

(d) habitual late attendance and habitual absence without leave or without sufficient cause;

(e) drunkenness, fighting or riotous, disorderly or indecent behaviours while on duty at the place of work;

(f) habitual neglect of work;

(g) causing wilful damage to work in progress or to property of the employer;

(h) sleeping on duty;

(i) malingering or slowing down work;

(j) acceptance of gifts from subordinate employees;

(k) conviction in any Court of Law for any criminal offence involving moral turpitude;

(l) continuous absence without permission and without satisfactory cause for more than ten days;

(m) giving false information regarding one's name, age, father's name, qualification or previous service at the time of the employment;

(n) leaving work without permission or sufficient reason;

(o) threatening, abusing or assaulting any superior or co-worker;

(p) preaching of, or inciting to, violence;

(q) abetment of or attempt to abetment of any of the aforesaid acts of misconduct;

(r) going on illegal strike either singly or with other workers without giving 14 day's previous notice;

(s) disclosing to any unauthorized person of any confidential information in regard to the working or process of the industrial establishment which may come into the possession of the worker in the course of his work;

(t) refusal to accept any charge-sheet or order or notice communicated in writing;

(u) failure or refusal to wear or use any protective equipment given by the employers;

(v) claiming false bill for reimbursement; and

(w) Involvement in unauthorized access of any IT system, computer network of the employer/customer/client.

(x) "sexual harassment" which means the 'sexual harassment' as defined in clause (n) of section 2 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013) and includes the circumstances specified in sub-section (2) of section 3 of the said Act.

Note:– The words defined in the Indian Penal Code (45 of 1860) and used in this sub-paragraph shall has the same meaning as defined in such Code.

(4) **Others Rules**

(a) Where a disciplinary proceeding against a worker is contemplated or is pending or where criminal proceedings against him in respect of any offence are under investigation or trial and the employer is satisfied that it is necessary or desirable to place the worker under suspension, he may, by order in writing, suspend him with effect from such date as may be specified in the order. A statement setting out in detail the reasons for such suspension shall be supplied to the worker within a week from the date of suspension.

(b) In the enquiry, the worker shall be entitled to appear in person or to be represented by an office-bearer of a Trade Union of which he is a member or a co-worker of his choice.

(c) The proceedings of the enquiry shall be recorded in Hindi or in English or the language of the State where the industrial establishment is located, whichever is preferred by the worker.

(d) The proceedings of the inquiry shall be completed within a period of ninety days from the date of suspension.

(e) If on the conclusion of the enquiry or, as the case may be, of the criminal proceedings, the worker has been found guilty of the charges framed against him and it is considered, after giving the worker concerned a reasonable opportunity of making representation on the penalty proposed, that an order of dismissal or suspension or fine or stoppage of annual increment or reduction in rank would meet the ends of justice, the employer shall pass an order accordingly: Provided that when an order of dismissal is passed under this clause, the worker shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period, and the subsistence allowance already paid to him shall not be recovered: Provided further that where an order imposing fine or stoppage of annual increment or reduction in rank is passed under this clause, the worker shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period: Provided also that in the case of a worker to whom the provisions of clause (2) of article 311 of the Constitution apply, the provisions of that article shall be complied with.

(d) If on the conclusion of the inquiry, or as the case may be, or the criminal proceedings, the worker has been found not to be guilty of any of the charges framed against him, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension after deducting the subsistence allowance paid to him for such period.

(e) The payment of subsistence allowance under this sub-paragraph shall be subject to the worker concerned not taking up any employment during the period of suspension.

(5) The authority imposing the punishment shall take into account any gravity of the misconduct, the previous record, if any, of the worker and any other extenuating or aggravating circumstances that may exist. A copy of the order passed by the authority imposing the punishment shall be supplied to the worker concerned.

(6) (a) A worker aggrieved by an order imposing punishment under sub-paragraph (4) may within twenty-one days from the date of receipt of the order, appeal to the appellate authority specified under clause (b).

(b) The employer shall, for the purposes of Clause (a) specify the appellate authority.

(c) The appellate authority, after giving an opportunity to the worker of being heard shall pass order as he thinks proper on the appeal within fifteen days of its receipt and communicate the same to the worker in writing: Provided that where there is a complaint of sexual harassment within the meaning of clause (B) to subparagraph (3), the complaint committee constituted for such purpose in each industrial establishment for inquiring into such complaints, shall, notwithstanding anything contained in this paragraph, be deemed to be the inquiring authority appointed by the employer for the purpose of these standing orders and the complaint committee shall hold the inquiry under this paragraph, unless separate procedure has been specified by the employer for the complaint committee for holding such inquiry into the complaints of sexual harassment, as far as practicable.

(7) The complaint committee referred to in sub-paragraph (6) shall consist of –

(a) a Chairperson who shall be a woman;

(b) one member representing Non-Government Organisation (NGO) or any other body which is familiar with the issue of sexual harassment or nominees of the National or State Human Rights Commission or the National or State Commission for Women familiar with the inquiry of the issue of sexual harassment, to be nominated by the employer.

(8) The complaint committee referred to in sub-paragraph (6) shall make and submit every year an annual report, to the appropriate Government, of the complaints and action taken.

(9) The employers or their agents shall report, to the appropriate Government, on the compliance of the guidelines issued by the appropriate Government in pursuance of section 23 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013) while monitoring the implementation of the said Act.

26. Grievance Redressal and Complaints.– All complaints or grievances arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent, shall be submitted to the Manager or person specified in this behalf with the right to appeal to the employer.

27. Liability of Employer and Workers.- The employer of the industrial establishment shall be responsible for the proper and faithful observance of the Standing Orders. The workers shall also observe the Standing Orders truly and faithfully.

28. Forwarding of information to the certifying officer under sub-section (3) of section 30 on adoption of model standing order by an industrial establishment.–

(1) If the employer adopts the model standing order of the Central Government referred to in section 29 of the Industrial Relations Code, 2020 (35 of 2020), he shall intimate the concerned certifying officer electronically the specific date from which the provisions of the model standing orders have been adopted.

(2) The model standing order adopted under sub-paragraph (1) in respect of an industrial establishment shall also be applicable to all other industrial units of the establishment irrespective of location.

(3) On receipt of information under sub-paragraph (1), the certifying officer shall enter the details of the industrial establishment who has adopted the Model Standing Order in the register maintained under rule 15 of the Industrial Relations (Central) Rules, 2020. In the event, the certifying officer observes that the industrial establishment which has intimated adoption of Model Standing Order is also engaged in activities other than for which Model Standing Order has been adopted then, he shall within a period of thirty days from such receipt of intimation of Model Standing Orders so adopted may give his observation, if any, that the employer is required to include or adopt

certain provisions which are relevant to his industrial establishment and indicate those relevant provisions and direct the employer of the industrial establishment that he shall, within a period of thirty days from the date of the receipt of such direction comply with the direction and send compliance report only in respect of those provisions which the certifying officer observes to get included. The provisions of the Model Standing Orders so adopted shall remain in force with effect from the date specified in sub-paragraph(1).

Explanation.- For removal of doubt, it is clarified that certifying officer shall not raise any observation in the event the industrial establishment is engaged in activities which are wholly covered by the activities of the industrial establishment to which the Standing Orders apply.

29. Exhibition of Standing Orders.- A copy of these Standing Orders in Hindi, English and in the language majority of workers in a factory are conversant with, shall be displayed on the notice board or electronic notice board and Human Resource portal of the industrial establishment, if any. Signature or Thumb impression of the person verifying.

REPLY OF SHOW CAUSE NOTICES

Show Cause Notice by Court (Reply)

If the Court sends a Show Cause Notice, the person to whom such notice is given must give it the highest priority. The show cause notice must not be taken lightly and its seriousness should be understood. The reason being that by sending a reply to the show cause notice, he/she can avoid criminal charges put on him and also the liabilities which arise from them. Points to be kept in mind while writing a reply to show cause notice:

1. A proper explanation has to be provided at the earliest.
2. It should be kept as brief as possible.
3. It must be written in such a manner that the Court is satisfied with the fact that he/she is aware of the gravity of the situation.

Some more points to be kept in mind

When you are filling a reply to a show cause notice it must always be kept in mind that you must give a reasonable excuse. Any individual must draft his/her reply in such a way that if any layman would read it he should find the same as reasonable. Moreover, always sound humble in your reply and also sound sorry for the same. Lastly, be always very careful to file the reply within the specified time limit mentioned in the notice.

In case of *Meenakshi v. State of Haryana*, Considering the chain of facts and highlighting the reply filed by the petitioner to the notice under Section 340, the Court clarified that there was nothing illegal in it and did not amount to miscarriage of justice at all, for the opportunity of being heard was given to the petitioner as she was allowed to file reply to the show-cause notice. It is the non-acceptance of the forgiveness sought that has led to the filing of the complaint in the Court. Inderjit Singh, J accordingly held that there is no merit in the case and accordingly, dismissed the petition.

NOTICES UNDER THE NEGOTIABLE INSTRUMENTS ACT

According to Section 138 of Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years', or with fine which may extend to twice the amount of the cheque, or with both.

Provided that nothing contained in section 143 shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.– For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

Notice under Section 138 of the Negotiable Instruments Act

LEGAL NOTICE

Dated _______________

To,

Name- XYX

Address____________, Royal Tower

Sec______ G.B Nagar

Noida- 201301

Mob- _______________

Sir,

Under the instructions from and on behalf of my client _________________ s/o__________________ r/o :- _______ _________________________________. I do hereby serve upon you with the following legal notice :-

That you and my client are having business relation with each other since last 9 years.

That in the moth of July to October 2017, you have purchased goods on a credit of Rs. 6,00,000/- and for which you approach and demanded the same, my client after thoughtful consideration and having good business relation with you had extended line of credit of Rs. 6,00,000/- (Six lakh only) for very short time.

That my client approached you time to time for the given said amount Rs,6,00,000/- but you noticee, always assured my client that I will pay the entire amount and you noticee demands some time.

That after the 10 months my client has been approached to above said noticee to return above said amount 6,00,000/- than you noticee demanded some more time of i.e.: – 9 to 10 month. After the completion of 9 to 10 month my client again approach to you, noticee with humble request for the above said amount. you, noticee had assured that my client that I will paid 6,00,000/- with interest and other charges and again demanded some more time i.e.:- one and half month. After the completion of one and half month to you noticee and the noticee had been given Rs, 1,00,000 in cash, and issued three cheuqes respectively i.e.: – (i) cheque no – _______ dated 20-12-2019 of Rs. 50,000/-, drawn on ________ bank of India branch ______________. (ii) cheque No- ________, Dated on -30-11-2019 of Rs 1,00,000/- , drawn on ____________ bank of India ______________. (iii) Cheque No. _______ dated on 31-12-2019 of Rs. 6,00,000/ – , drawn on bank of India , Branch ____________, in favor of my client. At that time my client had asked to you about of remaining balance amount Rs. 3,00,000/-, The noticee again assured my client that I will pay within near future.

As per your permission my client presented single cheque no __________ amount of Rs. 1,00,000/- on 16-12-2019 in his banker Kotak Mahindra bank, branch A- 000, address............– Delhi- 92 to your banker however, to the utter dismay to my client the above said single cheque dishonored by your banker for the reason “ Funds Insufficient” vide return memo dated on 18-12-2019.

That after the dishonored the above said cheque (Cheque no _____________), my client some time approached to you the noticee, but you have not returned the above said cheque amount of Rs. 1,00,000/- of my client.

That you are required to take a notice of demand under section 138 of the negotiable instrument Act., 1881 and to pay the amount within the period of 15 days from the receipt of this notice failing which you shall become liable to be prosecuted under the penal provision of the said section.

It is therefore, call upon you through this notice to pay the cheque of Rs. 1,00,000/ – (One lakh only), along with counsel fees of 10,00/- to my client within a period of 15 days from the receipt of this notice failing which you shall become liable to be prosecuted U/S 138 N. I. Act and other penal provision of the IPC.

In the eventuality of proceeding Show Cause taken up, you will have to suffer the cost and consequences thereof. Copy kept for further necessary action.

(Advocate)

REPLY TO LEGAL NOTICE UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT

Reply to Legal Notice under Section 138 of Negotiable Instruments Act, 1881

Name of the Advocate XXXXX

Advocate New Delhi-110019

Ph.011- 2437XXXX

Dt. 21.07.2015

To,

Sh. ....Advocate,

........................., Delhi High Court,

New Delhi-110001

SUB: REPLY TO YOUR LEGAL NOTICE U/S 138 NEGOTIARLE INSTRUMENT ACT, 1881 DATED 02.04.2023

Dear Sir,

Your legal notice dated 02.04.2023 has been placed before me by my client Sh.............. at Connaught Place, New Delhi -110001 and I, the undersigned, have been instructed to reply to your said notice by my client on his behalf as under:

A. That, at the outset you are being informed that the notice under reply, you have sent on behalf of your above said client, contains false and frivolous facts provided by your said client against my client, thereby your notice under reply deserves to be withdrawn, with unconditional apology by your client, because the claim made by you is without any basis and is based upon concocted facts, as no claim is made out against my client and in favour of your client.

B. That, in fact, my client did not place any order for supply of any machines whatsoever, as alleged by you. But, with a view to dispose off your old stock of outdated machines, you requested my client to place them at his shop for sale. Keeping in view old relations my client agreed to your client's proposal, which was subject to the condition that payment would be made only after those machines were sold out. However, those machines were not only outdated, but were also mechanically faulty, because of which till date they are lying with my client, which your client is at liberty to take back with two days' prior notice. It is pertinent to mention here that the cheque in question was handed over by my client blank and the same was to be used only upon instructions of my client, after he could sold out your all those machines.

C. That, however, your client has cheated my client by misusing that cheque which is not in the handwriting of my client. As a matter of fact, your client has committed fraud in the matter and, consequently, is liable to be proceeded under the relevant provisions of law.

D. That, therefore, it is denied that the cheque in question was issued by my client to your client in discharge of any liability. Rather, your client has misused that blank cheque with ulterior motives, after forging the same.

Reply on merits

1. That the contents of para 1 of your legal notice are wrong and denied and whatsoever is stated above is reiterated. It is denied that my client purchased from you client any machines whatsoever. Rather, my client helped your client to keep your machines in his godown/shop for disposal. Therefore, it is denied that the cheque in question was issued in discharge of any liability towards my client, as alleged in this para.
2. That the contents of para 2 are denied for want of knowledge. However, it is reiterated that my client ever issued any cheque, in the manner as alleged by you.
3. That, in reply to para 3 of your legal notice, what is stated above is reiterated. It is submitted that your client was not entitled to use that cheque for encashment and deposit the same in his bank.
4. That the contents of para's 4 &5 are denied for want of knowledge. However, it is reiterated that any cheque was issued in discharge of any liability towards my client to your client.
5. That the contents of para 6 need no comments. However, it is denied that my client committed any offence whatsoever.

In view of aforesaid facts and circumstances, you are being advised to further advice your client to withdraw the said notice under reply and further advise him not to drag my client in any frivolous litigation, failing which my client shall be constrained to contest the same, besides proceeding against your client under the relevant provisions of law, at the costs, risks and consequences of your client only. Copy kept for future record and reference.

Yours Sincerely,

Advocate

TIPS TO IMPROVE DRAFTING OF LEGAL DOCUMENTS

1. **Keep Readers In Mind:** What you write should resonate with what the recipients or readers want. For figuring out the exactness, you should get deep with their expectations. The tone & intent of the document should be based on the requirement of the audience.
2. **Jot Points Prior Writing:** Every legal document should be optimally organized. It is a key to its success. For it, create a layout by jotting all contextual points. Take those points as a guide for the effective legal document writing.

3. **Avoid Formal & Technical Terms:** The formal and technical terms is called Legalese in legal writing. These can be typical legal phrases and jargon. The inclusion of words like aforementioned, herein, wherein, and hereto etc. can make your writing offbeat, forced and detached. So, replace them with more concise, clear and simple words.

4. **Keep Writing To The Point:** Your every word should be comprehensively brief. Keep your sentences short and concise, contributing to the entire case. Avoid extraneous words. Complex sentences have a great scope for redundancies. So, try to make them short and simple.

5. **Active Voice Brings Clarity on Subject:** Passive voice creates confusion. It turns out more complicated when there is no mention of the subject of any doing. On the flip side, active voice makes it crystal clear who the doer or subject is. So, instead of writing “People were terminated”, say, “XYZ terminated people”.

6. **Be Careful When You Edit:** Impeccable writing needs merciless editing. Keep your heart aside when it comes to omitting unnecessary words. Don’t hesitate to rewrite where the documents need more clarity on a specific point. Legal writing needs careful proofreading. You may lose your credibility as a legal professional if your documents are full of grammatical & punctuation errors or spelling mistakes. Even, your client may underrate your work.

LESSON ROUND-UP

- The skill of drafting is one’s ability to express one’s thought process in writing. Probably no other profession demands this ability more than the legal profession. A document is a voice of a sender. Every written word in a legal profession is precious, as it has the power to advocate, inform, instruct and persuade.

- Lease means According to Section 105 of the Transfer of Property act, 1882, a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

- Essential Elements of lease are Parties, Subject matter of lease, Duration of lease, Consideration and Sub-lease.

- The essential distinction between a Lease and a Licence is that in a Lease, there is transfer of interest in the property while in the case of licence, there is no such transfer although the licensee acquires only a personal right to occupy the property. This principle has been confirmed by number of various High Courts and Supreme Court judgments.

- There are 6 types of Mortgages i.e Simple Mortgage, Conditional Mortgage, Usufructuary Mortgage, English Mortgage, Mortgage by deposit of Title deeds or Equitable Mortgage and Anomalous Mortgage.

- A gift is a common mode of transfer of property. It is the transfer of certain existing moveable or immoveable property by one person to another. The person transferring the property is called the donor. The person to whom the property is transferred is referred to as the done. The essential elements of a gift are Voluntary, Without consideration, Donor, Donee, Competence to gift, Subject matter of gift, Transfer and Acceptance.

- The sale deed is the main document by which a seller transfers his right on the property to the purchaser, who then acquires absolute ownership of the property. It is also referred to as the conveyance deed.

- Alternative Dispute Resolution (ADR) offers to resolve all type of matters including civil, commercial, industrial and family etc., where people are not being able to start any type of negotiation and reach the settlement. There are 3 types of ADR i.e Arbitration, Conciliation and Mediation.
- Employment agreements should be created in a way that is just and fair for all the employees. If this is followed, employees will do their tasks and responsibilities well and without any negative emotions toward their employers. Usually employment contracts contain only vague references to the "policies and procedures to which the employee will be bound".
- Minimum seven persons, eligible to enter into a contract, can form society. When a charitable organisation intends to have an open participation of large number of people in its functioning and decision making, it must be registered as a Society.
- The Act makes it obligatory for employers of an industrial establishment where 100 or more workers are employed to clearly define the conditions of employment, by way of standing orders/services rules and to make them known to the workmen employed. However in the N.C.T. of Delhi, the Act applies to an industrial establishment where 50 or more workmen are employed or were employed in the preceding 12 months.
- Points to be kept in mind while writing a reply to show cause notice are (i) A proper explanation has to be provided at the earliest (ii) It should be kept as brief as possible (iii) It must be written in such a manner that the Court is satisfied with the fact that he/she is aware of the gravity of the situation.

GLOSSARY

Document: Ordinarily the word "document" denotes a textual record. Increasingly sophisticated attempts to provide access to the rapidly growing quantity of available documents raised questions about which should be considered a "document".

General Power of Attorney: Where the instrument is executed generally for certain acts, it is called "General Power of Attorney", i.e. if the Power of Attorney authorizes the agent to act generally on in more than one transaction in the name of the principal, it is known as general power-of-attorney. However, the word "general" means that the power must be general in respect to the subject-matter.

Special Power Of Attorney: If an instrument is executed for specified act or acts, it is called a "Special Power of Attorney". In other words, a Power of Attorney conferring on the agent the authority to act in single or specified transactions in the name of the principal is known as special power-of-attorney.

Lease: According to Section 105 of the Transfer of Property act, 1882, a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Licence: Licence is a grant of a right to do something upon an immovable without creating interest in the property. It is therefore, distinguishable from an allied grant such as a lease or an easement. Both lease and easement create an interest in the property. Licence is only a permission to do something on an immovable property like occupation, or enjoying fruit thereof, or using it for some other purpose.

Mortgage: Mortgage is a transfer of an interest in a specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or the performance of an agreement, which may give rise to a pecuniary liability. The person borrowing and transferring his interest in an immovable property to the lender is the mortgagor. The lender is the mortgagee. The funds lent against which the property is used as security is the mortgage money. The instrument by which the transfer is effected is called a mortgage-deed.

Sale Deed: A sale deed acts as the main legal document for evidencing sale and transfer of ownership of property in favour of the buyer, from the seller. Further, it also acts as the main document for further sale by the buyer as it establishes his proof of ownership of the property.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. What are the essential fundamentals for drafting a document?
2. Define Power of Attorney and what is the difference between General and Special Power of Attorney?
3. Define Lease Deed & License Deed and draft a specimen Specimen.
4. Define Leave and Licence agreement and also mention a case law.
5. Define Mortgage? Explain the types of Mortgages?
6. What are the essential elements of Gift? Draft a specimen Gift deed.
7. What is Alternative Dispute Resolution (ADR) agreements?
8. Draft a Mediation Clause.
9. Draft a settlement agreement between two partners of a LLP on their respective shares. Assume necessary facts.
10. Draft a notice against a cheque bounce for your client. Assume necessary facts.

LIST OF FURTHER READINGS

- Chartered Secretary, The ICSI
- Articles written by professionals

OTHER REFERENCES (Including Websites/Video Links)

- https://www.icsi.edu/home/cs/

Drafting of Commercial Contracts

Lesson

5

KEY CONCEPTS

■ LLP Agreements ■ Joint Ventures and Foreign Collaborations Agreements ■ Service Agreements ■ Outsourcing Agreements

Learning Objectives

To understand:

- Drafting and details of Limited Liability Partnership Agreements
- Collaboration Agreements
- The detailed terms of Joint Development Right Agreements
- Dealership, Distributorship and Franchise Agreements
- Drafting of Outsourcing Agreements
- Preparation of Non-disclosure Agreements
- Types and Formation of e-contracts

Lesson Outline

- Introduction
- Important Clauses of Commercial Contracts
- Limited Liability Partnership Agreements
- Joint Venture
- Foreign Collaboration Agreement
- Joint Development Rights Agreement
- Service Agreements
- Dealership Agreement, Distributorship Agreement & Franchise Agreement
- Outsourcing Agreements
- Non-disclosure Agreement
- Electronic Contracts
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites/video links)

REGULATORY FRAMEWORK

- Limited Liability Partnership Act, 2008
- The Companies Act, 2013,
- Arbitration and Conciliation Act, 1996
- Transfer of Property Act, 1882
- Indian Contract Act, 1872

INTRODUCTION

When your business starts to make agreements with other businesses for supply or sale of goods and services, then a proper commercial contract is required to record these agreements and protect the parties in case of a dispute. Commercial contracts are legally enforceable agreements between two or more parties. They are agreements used to govern commercial activity(s) and involve with the commercial aspects of a product or service. They guarantee that parties follow their word and streamline transaction flow. The terms of a commercial agreement are usually quite formal and vary for each organisation and transaction. A commercial contract meets two objectives:

– the first is that it must simultaneously advance and protect the business interests of the parties.

– the second, and often overlooked, goal of a properly drafted commercial contract is that it should not unduly disturb or endanger the commercial arrangement that the two contracting parties have struck.

Examples of commercial contracts include	Joint Venture Agreement
	Shareholders Agreement
	Business Purchase Agreement
	Purchase and Supply Agreement
	Sale and Distribution Agreement
	Franchise Agreement
	Non-disclosure Agreement
	Employment Contracts
	Intellectual Property License and Assignment
	Partnership Agreement
	Loan and Finance Agreement

Important Clauses of Commercial Contracts

- Confidentiality clause to prevent unauthorized disclosure of confidential information.
- Dispute resolution clause stating how disputes arising from the transaction will be handled.
- Details on the court that will have jurisdiction over matters arising from the transaction and the governing law, especially for domestic and international cross-border transactions.
- Termination clause detailing how any party can opt-out of the arrangement and conditions that will end the contract.
- Indemnity clause to protect parties from liabilities caused by a breach of contract or negligent acts of third parties.
- Liquidated damages clause to specify damages upon breach of contract.
- Force majeure clause to remove liability for failure to perform contractual obligation caused by unforeseen and unavoidable circumstances.

LIMITED LIABILITY PARTNERSHIP AGREEMENT

Limited Liability Partnership is governed by Limited Liability Partnership Act, 2008 which came into force on April 1, 2008. LLP Agreement is a written contract between the partners of the LLP or between the LLP and its designated partners. It establishes the rights and a duty of the designated partners toward each other as well toward the LLP. It is compulsory to execute and file the LLP agreement with MCA within 30 days of the incorporation of LLP. It creates the foundation for the smooth running of Limited Liability Partnership. It defines the outlook and set well define concepts for decision making, adding a new partner and leaving of existing partners or change in roles.

Content of LLP Agreement

1. **Name of the LLP**

   The name must end with LLP or Limited Liability Partnership as per the provisions of the LLP Act, 2008.

2. **Date of the agreement and parties to the agreement**

   After incorporation, the agreement is to be executed within 30 days as per the LLP Act, 2008. LLP agreement is between all the partners and designated partner. The agreement must contain the date and of entering into an agreement.

3. **Introductory provisions**

   It includes all the definitions of terms used in the LLP agreement.

4. **Place of business**

   The agreement must contain the place of business which is the registered office of the LLP.

5. **Business activity**

   It is important to include the business activities to be carried on by the LLP. It must be in the same nature as approved by the MCA at the time of incorporation of LLP.

6. **Duration**

   If the LLP is formed for the specific period, then such period must be mention after which the LLP must be dissolved. LLP can also be formed for certain object, after completion of such object; the LLP must be closed. In the absence of specific period or object, one can include the duration of LLP as up to the period until which, it is terminated with the consent of the partners of the LLP.

7. **Accounting and Auditing etc.**

   This includes how to maintain the books of accounts, whether it is cash basis or accrual basis. During which period a partner can access books of accounts, whether an audit is mandatory or will follow the rules mentioned in the LLP Act.

8. **Partners' contribution and method of contribution**

   Represents the contribution ratio of partners in terms of capital invested, interest on contribution, Profit Sharing Ratio as well as the time period after which the capital can be withdrawn by any of the designated partners. It is important for maintaining a good relationship between partners.

9. **Record keeping and bank arrangement**

   It includes the maintenance, storage, and recording of books and other related documents.

10. **Allocation and distribution**

    It clarifies the system of profit sharing among all partners and distribution including interim distribution or final distribution. It portrays the distribution of Profit between the partners as per the decided ratio.

11. **Disassociation of partner**

    Specifies the terms and conditions when partners can withdraw or disassociate from the LLP. This is one of the vital clauses of the LLP Agreement. It states the rights of partners and rights on assets after disassociation.

12. **Partners' rights to records**

    Each partner has the right to check the records for avoiding misappropriation.

13. **Management and Fiduciary Duty**

    It takes into account the liability of the management of a LLP and the appointment of the person liable for taking care of confidential information of the LLP.

14. **Arbitration and General Provisions**

    In the case of conflict between parties, the parties may involve the third person known as an arbitrator who listens to both the parties and takes a decision, which is to be accepted by both the parties concerned and the final order must be applied on both parties.

15. Other Provisions

Several other provisions also come under the LLP Agreement such as admission of new partners and its rights thereafter and changes in the designation. It includes the right to take part in business, title and interest in assets, right to access, right to continue the independent business, right to recover the due debt and selling, transferring of partnership right to existing partner and another partner. It covers the mode, time period of the meeting of partners, the decision-making process, agenda and the voting rights of the partners.

It also includes the rights of designated partners as well as how those rights can be availed from the LLP. It considers methods of readmission of partners as well as cross purchase. This clause illustrates the right of redemption of a partner's rights.

Specimen Model Limited Liability Partnership Agreement or LLP Agreement

Limited Liability Partnership Agreement or LLP Agreement

THIS AGREEMENT of Limited Liability Partnership (LLP) is made at ____________ on this _______ day of _____________, 20_____

BETWEEN

(1) ____________________________________ a company registered under the Companies Act, 2013, having its Registered Office at ____through its authorised representative which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assignees and hereinafter called the FIRST PARTY,

(2) ______________________________ s/o, d/o, w/o ______________________________r/o _______________ __________________________________ which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assignees and hereinafter called the SECOND PARTY, and

(3) _______________________________ s/o, d/o, w/o _____________________________ r/o ______________ _________________________________ which expression shall, unless it be repugnant to the subject or context thereof, include their legal heirs, successors, nominees and permitted assignees and hereinafter called the THIRD PARTY, and

(All the PARTIES hereto, i.e., the FIRST PARTY, the SECOND PARTY and the THIRD PARTY shall be collectively called or referred to as the PARTNERS).

WHEREAS the First Party is ____ _______________.

WHEREAS the Second Party is ____ ________________.

WHEREAS the Third Party is ____ ________________.

NOW the First Party, the Second Party and the Third Party are interested in forming a Limited Liability Partnership (LLP) under the Limited Liability Partnership Act, 2008 and intend to write down the terms and conditions of the said LLP as below.

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES/PARTNERS HERETO AS FOLLOWS:

Name of the LLP

1. A Limited Liability Partnership (LLP) shall be carried on in the name and style of M/s. ___________________________ LLP and hereinafter called as the LLP.

Registered Office

2. The LLP shall have its Registered Office at_________________________ and/or at such other place or places, as shall be agreed to by the majority of the partners from time to time.

Capital Contribution

3. The Capital Contribution of the LLP shall be Rs. _____________________ (Rupees ______________________________ only) which shall be contributed by the partners in the following proportions:

   First Party _______% i.e. Rs. _____________ (Rupees_____________ only)

   Second Party _________% i.e. Rs ______________ (Rupees_____________ only)

   Third Party__________% i.e. Rs _____________ (Rupees______________only)

The further Contribution if any required by the LLP shall be brought by the partners in their profit sharing ratio.

Profit sharing ratio (PSR)

4. All the Partners of the LLP are entitled to share Profits & Losses in the ratio of their respective Capital Contribution in the LLP. The net profits & losses of the LLP shall be arrived at after providing for payment of Remuneration to the Designated and working partners and Interest on Partners' Contribution in the LLP or Loan given by them to the LLP.

Business and Objects of the LLP

5. The objects, business and activities of the LLP shall be under :

   a. ____

   b. ____

   and other incidental and ancillary business more particularly described in the Schedule 'A' annexed herewith or any other business in any other manner as may be decided by the majority of the Partners.

Common Seal

6. The LLP shall have a common seal to be affixed on documents as defined by partners under the signature of any of the Designated Partners.

7. That the immovable properties purchased by the LLP shall be clear, marketable and free from all encumbrances.

Admission of New Partner

8. No Person may be introduced as a new partner without the consent of all the existing partners. Such incoming partner shall give his prior consent to act as Partner of the LLP.

9. Capital Contribution of the new partner may be tangible, intangible, movable or immovable property and the incoming partner shall bring minimum Contribution of Rs _______________________ (Rupees________________ only).

10. Profit Sharing Ratio (PSR) of the incoming partner will be in proportion to his capital contribution in the LLP.

First Schedule of LLP Act not to apply

11. Provisions of First Schedule to the Limited Liability Partnership Act, 2008 will not apply to the LLP as the LLP will be governed by the terms of this LLP Agreement.

Remuneration & Interest to Partners

12. The LLP shall pay such Remuneration to the Designated Partners and working partners as may be decided by the majority of the Partners, for rendering his/her/its services.

13. The LLP shall pay such Interest to the Partners on Capital Contribution in the LLP as may be decided by the majority of the Partners.

14. If any partner advances any sum of money to the LLP over and above his Capital Contribution, the same shall be a debt due from the LLP to the said partner and shall carry simple interest at the rate of % per annum or any other rate decided by the partners by majority/unanimously.

Rights of the Partners

15. All the partners hereto shall have the rights, title and interest in all the assets and properties in the said LLP in the proportion of their Capital Contribution.

16. All the partners of the LLP shall be the working partners and each of the partners shall give time and attention as may be required for the fulfillment of the objects of the LLP business.

17. Every partner has a right to have access to and inspect and have copy any of the books of the LLP.

18. Each of the parties hereto shall be entitled to carry on their own, separate and independent business as they might hitherto be doing or may hereafter do as they deem fit and proper and other partners and the LLP shall have no objection thereto, provided that the said partner has intimated the said fact to the LLP before starting or commencing the independent business and in case of a business directly or indirectly competing with that of the LLP taken written consent of the LLP, provided also that he/she/it shall not use the name of the LLP to carry on the said business.

19. The LLP shall have perpetual succession and the death, retirement or insolvency of any partner shall not dissolve the LLP.

20. On retirement of a partner, the retiring partner shall be entitled to full payment in respect of all his rights, title and interest in the partnership as herein provided. However, upon insolvency of a partner his or her rights, title and interest in the LLP shall come to an end.

21. Upon the death of any of the partners herein any one of his or her or its heirs will be admitted as a partner of the LLP in place of such deceased partner. The heirs, executors and administrators of such deceased partners shall be entitled to and shall be paid the full payment in respect of the right, title and interest of such deceased partner.

22. On the death of any partner, if his or her or its heirs opt not to become the partner, the surviving partners shall have the option to purchase the contribution of the deceased partner in the LLP.

Duties of the Partners

23. Every partner shall account to the limited liability partnership (LLP) for any benefit derived by him without the consent of the LLP from any transaction concerning the LLP, or from any use by him of the property, name or any business connection of the LLP.

24. Each Partner shall be just and faithful to the other partners in the conduct of business and all the transactions relating to the LLP.

25. Every partner shall indemnify the limited liability partnership (LLP) and the other existing partners for any loss caused to it by his/her/its fraud in the conduct of the business of the limited liability partnership (LLP).

26. Each partner shall render true accounts and full information of all things affecting the LLP to any partner or his legal representatives.

27. In case any of the Partners of the LLP desires to transfer or assign his, her or its interest or share in the LLP he has to offer the same to the remaining partners by giving 15 days notice. In the absence of any communication by the remaining partners the concerned partner can transfer or assign his share in the market.

28. No partner shall without the written consent of the LLP, –

    a. Engage any employee or dismiss any employee of the LLP except for gross misconduct.

    b. Employ any money, goods or effects of the LLP or pledge the credit thereof except in the ordinary course of business and upon the account or for the benefit of the LLP.

    c. Lend money or give credit on behalf of LLP or have any dealings with any person, company or firm whom the LLP has previously in writing forbidden it to trust or deal with. Any loss incurred through any breach of the provisions shall be made good to the LLP by the partner incurring the same.

    d. Enter into any bond, bail or become guarantor, surety or security with or for any person or knowingly do, cause or suffer to be caused anything whereby the LLP property or any part thereof may be seized or endangered.

    e. Assign, mortgage or charge his/her/its share in the LLP or any asset or property of the LLP or make any other person a partner or sub-partner therein.

    f. Compromise or compound or release or discharge any debt due to the LLP (except upon payment in full).

    g. Engage directly or indirectly in any business competing with that of the limited liability partnership (LLP).

Meetings of Partners of the LLP

29. All matters related to the LLP as mentioned in Schedule B to this LLP Agreement shall be decided by a Resolution passed by majority in number of the partners & for this purpose each partner shall have one vote.

30. The meeting of the Partners may be called by sending 15 days prior notice to all the partners at their residential address or by mail at the e-mail ID provided by the individual Partners in written to the LLP. In case any partner is a foreign resident the meeting may be conducted by serving 15 days prior notice through e-mail. Provided that the meeting may be called at shorter notice, if the majority of the partners agree in writing to the same either before or after the meeting. In case, any urgent meeting is called, the notice requirement may be ratified by all the Partners.

31. Meetings of the Partners shall ordinarily be held at the Registered Office of the LLP or at any other place as per the convenience of partners.

32. With the written Consent of all the partners, a Meeting of the Partners may be conducted through Tele-Conferencing or Video-Conferencing.

33. The limited liability partnership (LLP) shall ensure that decisions taken by it are recorded in the minutes

within thirty days of taking such decisions and are kept and maintained at the registered office of the LLP.

Duties of Designated Partners

34. Authorised representatives of the First Party and the Second Party shall act as the Designated Partners of the LLP in terms of the requirements of the Limited Liability Partnership Act, 2008.

35. Designated Partners shall be responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership (LLP) in respect of compliance of the provisions of the LLP Act including filing of any Document, Return, Statement and the like Report pursuant to the provisions of Limited Liability Partnership Act, 2008.

36. The Designated Partners shall be responsible for the doing of all acts and deeds arising out of this LLP Agreement.

37. Each partner shall punctually pay and discharge the separate loans and debts and indemnify the other partners and the LLP assets against any loss caused or suffered by the LLP and all proceedings, costs, claims and demands from the LLP in respect thereof.

Books of Account

38. Books of Accounts of the limited liability partnership (LLP) shall be kept at the registered office of the LLP for reference, access, inspection and having copies of by all the partners.

39. The accounting year of the LLP shall be the Financial Year, i.e., from 1st April of the year to 31st March of the subsequent year. The first accounting year shall be from the date of commencement of the LLP till 31st March of the subsequent year.

Bank Accounts

40. Bankers of the partnership shall be ____________________________ Bank, _________________________ Branch and/or such other Bank or Banks as the partners may from time to time be agree upon by majority/ unanimously.

41. Bank Accounts of the LLP including Loans, Advances & Credit Limits, if any, from the Banks and Financial Institutions taken by the LLP, may be opened and operated by the Designated Partners and other Partners either singly or jointly as may be agreed upon from time to time by the partners by majority/ unanimously.

Extent of Liability of the LLP

42. The LLP is not bound by anything done by a partner in dealing with a person if –

    a. the partner in fact has no authority to act for the LLP in doing a particular act; and

    b. the person knows that he has no authority or does not know or believe him to be a partner of the LLP.

Indemnity

43. The limited liability partnership (LLP) shall indemnify each partner in respect of payments made and personal liabilities incurred by him –

    a. in the ordinary and proper conduct of the business of the limited liability partnership (LLP); or

    b. in or about anything necessarily done for the preservation of the business or property of the limited liability partnership (LLP).

44. The LLP shall indemnify and defend its partners and other officers from and against any and all liability in connection with claims, actions and proceedings (regardless of the outcome), judgment, loss or settlement thereof, whether civil or criminal, arising out of or resulting from their respective performances as partners and officers of the LLP, except for the gross negligence or willful misconduct of the partner or officer seeking indemnification.

Arbitration

45. All disputes between the partners or between the Partners and the LLP arising out of the LLP Agreement which cannot be resolved in terms of this LLP Agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996).

Cessation of existing Partners

46. Any partner may cease to be a partner of the LLP by giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner.

47. No majority of Partners can expel any partner except in the situation where any partner has been found guilty of carrying of activity/business of the LLP with fraudulent purpose.

Winding up of the LLP

48. The LLP can be wound up with the consent of all the partners subject to the provisions of the Limited Liability Partnership Act 2008.

IN WITNESS WHEREOF the parties have put their respective hands the day and year first hereinabove written.

IN WITNESS WHEREOF the parties hereto have hereunto set and subscribed their respective hands and seals the day and year first hereinabove written.

______________________	______________________	______________________
Signed by the above Party 1 (Name, Signature and Details)	Signed by the above named party 2 (Name, Signature and Details)	Signed by the above named party 3 (Name, Signature and Details)

Witnesses

1. ______________________

   (Name, Signature and Details)

2. ______________________

   (Name, Signature and Details)

SCHEDULE A

Incidental, Ancillary or Other Business of the LLP

(1) THE OBJECTS OR BUSINESS INCIDENTAL OR ANCILLARY TO THE ATTAINMENT OF THE MAIN OBJECTS OR BUSINESS ARE:

(2) THE OTHER BUSINESS ARE:

SCHEDULE B

MATTERS TO BE DECIDED BY A RESOLUTION PASSED BY A MAJORITY IN NUMBER OF THE PARTNERS

Note: According to section 23(4) of Limited Liability Partnership Agreement, 2008, in the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule as provided hereunder.

PROVISIONS REGARDING MATTERS RELATING TO MUTUAL RIGHTS AND DUTIES OF PARTNERS AND LIMITED LIABILITY PARTNERSHIP AND ITS PARTNERS APPLICABLE IN THE ABSENCE OF ANY AGREEMENT ON SUCH MATTERS

1. The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement on any matter, by the provisions in this Schedule.

2. All the partners of a limited liability partnership are entitled to share equally in the capital, profits and losses of the limited liability partnership.

3. The limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by him—

   (a) in the ordinary and proper conduct of the business of the limited liability partnership; or

   (b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.

4. Every partner shall indemnify the limited liability partnership for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.

5. Every partner may take part in the management of the limited liability partnership.

6. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.

7. No person may be introduced as a partner without the consent of all the existing partners.

8. Any matter or issue relating to the limited liability partnership shall be decided by a resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.

9. Every limited liability partnership shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the limited liability partnership.

10. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.

11. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.

12. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.

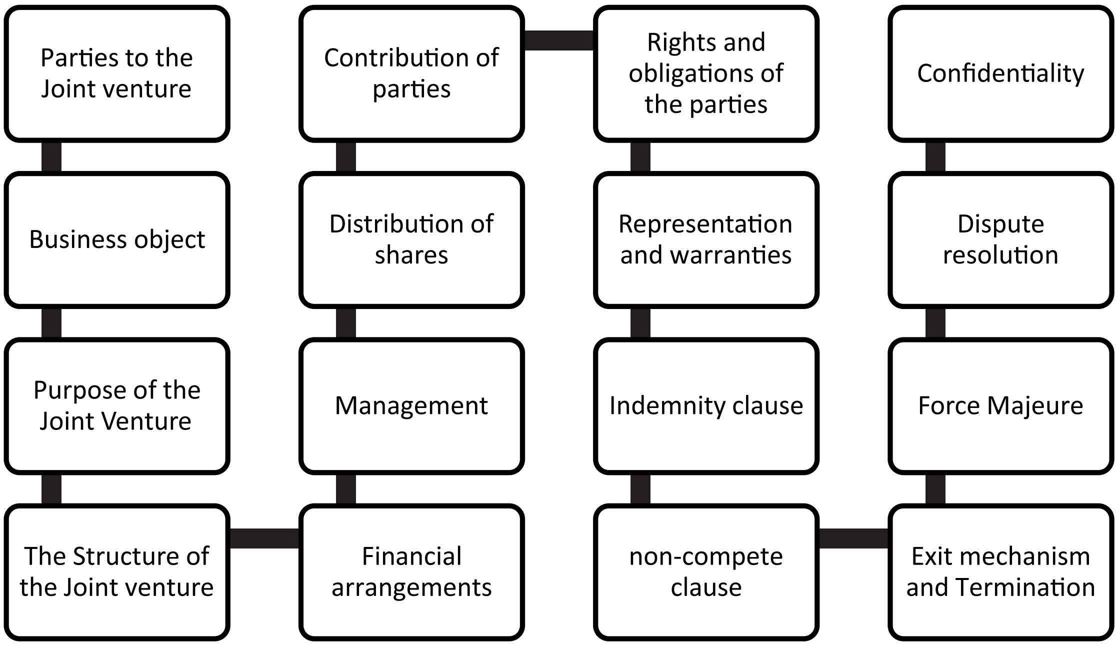
13. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

14. All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996.

JOINT VENTURE

A joint venture (JV) means a strategic arrangement between two or more businesses, where resources are pooled, to work together on a specific project or an ongoing basis. Joint ventures are a useful way of collaborating with other businesses and to combine different areas of expertise for targeted or general business purposes. Each of the participants in a JV is responsible for profits, losses, and costs associated with it. However, the venture is its own entity, separate from the participants' other business interests. It is important that the parties to the joint venture define their respective roles and responsibilities early on and how the parties will work together to achieve the joint venture's targets. There are several types of ways to structure a joint venture. Before taking too many steps towards a joint venture it is important to note whether the deal is for a short or long-term arrangement, whether a separate company should be set up for the purpose, whether it is purely a loose collaboration agreement or whether there is a view to a merger or acquisition in the future. Among the categories of JV Agreements Contractual Joint Venture can take the form of two or more parties coming together to collaborate on a specific project, share the costs of R&D act or share knowledge and expertise on an ongoing basis, Partnership where two or more parties start working together and carry on a business in common with a view to profit they will form a *de facto* partnership, even if the parties are unaware of this and Limited Liability Company involve a high-cost project, eg developing a new product or service, and both parties will put capital into the venture, they may decide to form a new company for this purpose (sometimes called a 'special purpose vehicle/SPV').

Important clauses of joint venture agreement include


Parties to the Joint venture
Business object
Purpose of the Joint Venture
The Structure of the Joint venture
Financial arrangements
Management
Distribution of shares
Contribution of parties
Rights and obligations of the parties
Representation and warranties
Indemnity clause
non-compete clause
Exit mechanism and Termination
Force Majeure
Dispute resolution
Confidentiality

Specimen Joint Venture Agreement

Joint Venture with Foreign Company

THIS JOINT VENTURE AGREEMNET IS MADE on this ______ **day of** ______________________, **20**____ **at** __________________________________

BETWEEN

AMCO INC. Incorporated under the laws of the United States of America having its office at 5 Seventh Street, New York of the ONE PART

AND

INCO LTD. a company registered under the Companies Act, 2013 having its registered office at ______________ ___________________________________ of the OTHER PART.

WHEREAS AMCO INC. (hereinafter referred to as AMCO) carries on business as manufacturer of and dealer and exporter in Computers, Computer Hardware and Software and has worldwide market and intends to extend its market here in India and elsewhere.

WHEREAS INCO LTD. (hereinafter referred to as INCO) carries on business as manufacturer of, dealer in and exporter of Computer Software and intends to expand its business in India and abroad.

WHEREAS AMCO and INCO intend to co-operate in manufacturing/dealing in and exporting Computers, Hardwares and Software in India and abroad for mutual benefit by setting up a new company.

NOW THESE PRESENTS WITNESSETH AND THE PARTIES HEREBY AGREE AS FOLLOWS:

1. A Joint-stock company would be formed under the name and style of Indo-American Company Pvt. Ltd. under the Companies Act 2013 having its Registered Office at ______________________________________.
2. AMCO and three of its nominees and INCO and three of its nominees would be the subscribers to the Memorandum and Articles of Association of the said company to be incorporated.
3. The shareholding in the Share Capital of the said company to be incorporated would be in equal proportions between AMCO and INCO.
4. The Memorandum and Articles of Association of the company proposed to be incorporated would be settled in mutual consultation and the same would govern the rights and obligations of AMCO and INCO in relation to the said proposed company.
5. AMCO will be allotted shares in the said new company partly in cash and partly towards the cost of plant, machinery and equipment to be supplied by AMCO to the new company and in consideration for assignments by AMCO of its Patent Rights, Trade Marks, Trade Names and Licences in favour of the new company to be incorporated. The consideration for allotment of shares to AMCO would also include the supply and transfer of technical formula, new inventions, secret processes, technical information concerning the production, manufacturing, testing, specifications, instructions and information as to the manufacture of, development, use and servicing, maintenance and improvement of quality of Computers, Hardware and Software and generally in connection with the successful carrying on of the said business by the said new company to be incorporated.
6. INCO will furnish necessary technical assistance and expertise to the new company for assembling, installation, start-up and for smooth running of the manufacturing and selling processes as might be required by the new company from time to time.
7. INCO will furnish to the new company all other technical assistance and advice in relation to the operation of the plant and machinery, repairs thereof, testing facilities, training facilities and Research & Development facilities should be arranged for, provided and continued for successful running of the business of the new company.
8. The shares that would be allotted by the new company should not be transferred by either AMCO or INCO within a period of five years from the date of allotment and thereafter if any of the parties intends to transfer any share then the same shall be offered first to the other party at a price to be determined by a Valuer to be appointed by mutual agreement and in absence by application to the Indian Chamber of Commerce.
9. The new company will manufacture Computers, Hardwares and Softwares and allied accessories and

products and the same would be marketed in India and exported to other countries under the Trade name or Brand name made available by AMCO and by any other name and shall obtain new Trade Mark and obtain Patents for further and better manufacturing, selling and exporting the new company's products.

10. AMCO will buy 75% of the products of new company for exporting; to other countries through its own organisations or outlets at a remunerative price not below the price at which the products are sold in India.
11. Neither party shall carry on their own business in a manner which will directly adversely affect the business and profitability of the new company.
12. The expenses for the setting up and promotion of the new company would be shared equally by AMCO and INCO.
13. The consideration for allotment of shares of the new company to INCO shall be paid in cash and in kind such as by transfer of immovable properties for the setting up of factory and making arrangement for the office accommodation of the new company. The valuation of such immovable properties including office accommodation would be decided by mutual agreement between AMCO and INCO.
14. Any disputes or differences arising in relation to this agreement, its construction, validity, performance, breach or any other question shall be referred to the Indian Chamber of Commerce for settlement by Arbitration or Conciliation in Calcutta and the decision of the said Arbitrator shall be final and binding on both the parties.
15. This agreement is made subject to obtaining approvals of the Indian Government and other concerned authorities.
16. In the event certain additions or alterations are required under this agreement due to imposition of certain terms and conditions by Government of India or appropriate authority granting the approval shall be incorporated in this agreement by way of a supplemental agreement and if required the Memorandum and Articles of Association of the new company would also be in conformity with such directions or approvals of the appropriate authorities.
17. IN WITNESS WHERE OF the parties hereto have signed, sealed and delivered these presents on the day, month and year first above-written.

______________________________ ______________________________

Mr. ______________________________ Mr. ______________________________

Pursuant to the Board Resolution Pursuant to the Board Resolution
dated _______________ of AMCO dated _______________ of INCO

Signature in the presence of:

1 ______________________________

2 ______________________________

(Name and Details of Witnesses)

FOREIGN COLLABORATION AGREEMENTS

When two parties join hands for exchange of technical know-how, technical designs and drawings; training of technical personnel of one of the parties in the manufacturing and/or research and development divisions of the other party; continuous provision of technical, administrative and/or managerial services, they are said to be collaborating in a desired venture. The word "collaboration" has, however, acquired a specific meaning, which refers to cooperation between a party within India and a party abroad. The agreements drawn and executed between such collaborating parties are known as "foreign collaboration agreements". With sophistication and technical advance achieved in the developed countries and motivated by the desire of carrying the country into the twenty-first century, the Indian entrepreneurs are seeking all possible avenues for obtaining technical know-how in the fields of agriculture, mining, oil exploration, power generation, etc. A large number of Indian industrialists have already entered into long and short-term collaboration arrangements with foreign companies, firms etc. In order to ensure quick processing of the proposed collaboration arrangements and on a uniform basis, the Central Government has issued guidelines for prospective collaborators so that they submit their proposals in accordance with those guidelines.

Example: Mr. A is a plot owner and Mr. B is constructor, entered into a contract stating inter alia that Mr. B will construct 4 floors on the entire plot and Mr. A will take two floors and remaining two floors will be owned by Mr. B on account of construction cost. Here, Mr. B is not taking any construction cost from Mr. A and they are using each other's' resources. Such contracts are named as Collaboration contracts.

Guidelines for entering into Foreign Collaboration Agreements

These guidelines cover the following aspects of foreign collaboration agreements:

1. **Investment:** Where in a foreign collaboration agreement, equity participation is involved, the value of the shares to be acquired about be brought in cash.
2. **Lump Sum Payment:** The amount agreed to be paid by an Indian party to a foreign collaborator for technology transfer should be paid in three instalments as follows:
   (i) one-third to be paid after the agreement has been approved by the Central Government;
   (ii) one-third on transfer of the technical documents; and
   (iii) one-third on the commencement of commercial production.
3. **Royalty:** Royalty payable to a foreign collaborator has to be calculated on the basis of net ex-factory selling price of the product less excise duties and cost of imported components. The normal rate of royalty may be three per cent to five per cent. This rate will depend upon the nature and extent of the technology involved. Payment of a fixed royalty is preferred by the Government in certain cases. There should be no provision for payment of a minimum guaranteed royalty, regardless of the quantum and value of production.
4. **Duration of agreement:** Normal period of a foreign collaboration agreement is eight years subject to maximum of ten years. The period is approved by the Government usually for five years from the date of the agreement in the first instance or five years from the date of commencement of commercial production; the total period, however, not exceeding eight years from the date of the agreement.
5. **Renewal or extension of agreement:** The Central Government may consider an application for renewal of a foreign collaboration agreement or for extension of its period on merit.
6. **Remittances:** Remittances to foreign collaborators are allowed only on the basis of the prevailing exchange rates.
7. **Sub-licensing:** An agreement shall not normally impose any restriction on the sub-licensing of the technical know-how to other Indian parties. The terms of such sub-licensing will be as mutually agreed to between all the concerned parties including the foreign collaborator. Sub-licensing is, however, subject to the Central Government's approval.

8. **Exports:** No foreign collaboration agreement shall be allowed to contain any restriction on the free export to all countries, except in a case where the foreign collaborator has licensing arrangements in which case the countries concerned shall be specified.

9. **Procurement of capital goods etc.:** There should be no restriction on procurement of capital goods, components, spares, raw materials etc. by the Indian party. The Indian collaborator must be free to have control over pricing facility and selling arrangements.

10. **Technicians:** The number, terms of service, remuneration, etc., of technicians to be deputed on either side are subject to approval of the Reserve Bank of India.

11. **Training:** Provision shall be made in the agreement for adequate facilities for training of Indian technicians for research and development.

12. **Exploitation of Indian patents:** Where any item of manufacture is patented in India, the payment of royalty or lump sum to the foreign collaborator should make provision for compensation for use of such patent until its expiry. There should also be provision for manufacture by the Indian company of the said item even after the expiry of the collaboration agreement without making any additional payment.

13. **Consultancy:** If the necessity for any consultancy arises, it should be obtained from an Indian company. If, however, in the special circumstances foreign consultancy becomes essential, even then the prime consultant should be an Indian company.

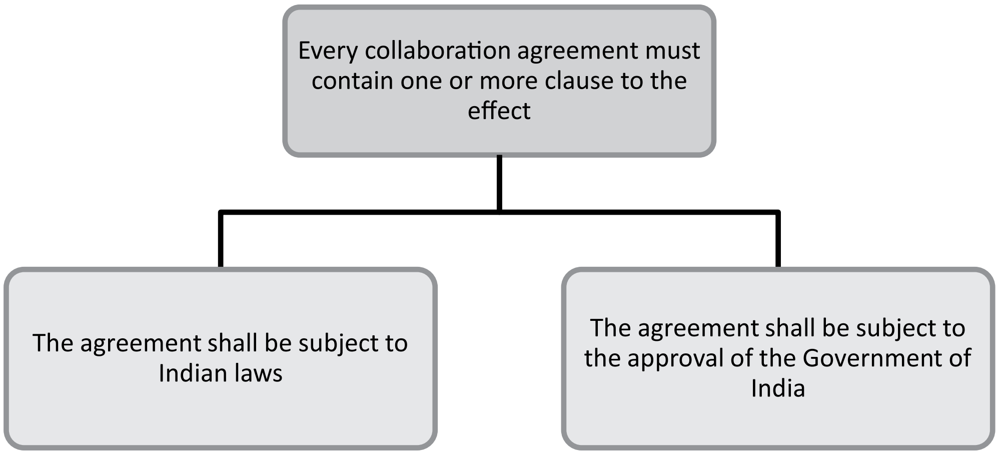
14. **Brand Name:** There should be no insistence on the use of foreign brand names on products for sale in India. There can, however, be no objection for use of foreign brand name on products to be exported to other countries.

15. **Indian Laws:** All collaboration agreements shall be subject to Indian laws.

16. **Approval of Central Government:** Every foreign collaboration agreement shall be approved by the Central Government.

    While drafting a collaboration agreement, care should be taken that it is in compliance with the guidelines as detailed above.

Two important Clauses for Foreign Collaboration Agreements


Every collaboration agreement must contain one or more clause to the effect
The agreement shall be subject to Indian laws
The agreement shall be subject to the approval of the Government of India

Specimen Foreign Collaboration Agreement

This Foreign Collaboration Agreement is executed on this ______ day of ________________________, 20______

BETWEEN

M/s ________________________________, a Foreign Company incorporated in the United Kingdom and having its registered office at ____ (hereinafter called the U.K. Company) of the ONE PART.

AND

M/s ________________________________, a company incorporated in India under the Companies Act, 2013 and having its registered office at ____ (hereinafter called the Indian company) of the OTHER PART:

WHEREAS the Indian company has been incorporated with the object of manufacture and production of ______ ____;

WHEREAS the Indian company has already constructed factory buildings, installed plant and machinery and commenced manufacture and production of ____;

WHEREAS the Indian company with a view to improve, still further, the quality of the commodities manufactured, and to increase production, is desirous of procuring the latest technique and know-how relating to the manufacture of the above said commodities;

WHEREAS the Indian company, therefore, approached the U.K. company that has considerable experience in the line of manufacture engaged in by the Indian company, and requested the U.K. company to extend to the Indian company necessary technical assistance in that behalf; AND

WHEREAS the U.K. company has agreed to extend technical assistance and to furnish to the Indian company for improvement of their business the requisite know-how in the form of designs, plans, engineering drawings, technical advice and also to supply technicians to advice for improvement of the existing factories, machineries and plant and also to provide to the Indian personnel necessary technical training to enable them to successfully handle and exploit the technical know-how to be imparted to the Indian company subject to the terms and conditions set out hereunder:

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

(1) In consideration of the remuneration paid by the Indian company to the U.K. company as described hereinafter, the U.K. company shall supply to the Indian company:

  (a) technical advice and know-how for the purpose of improving or adding to the existing factories and installing additional plant and machineries, if necessary, for the manufacture of...;

  (b) further the necessary plans, factory-design and layouts, charts and drawings, documentation and other forms of technical know-how for the said purpose;

  (c) render advice in the matter of purchase of the further plant and machinery suitable and necessary for the factory;

  (d) lend the services of their technicians to assist the Indian company in carrying out the improvement to the factories and for installing additional plants and machinery;

  (e) provide technicians from their own staff to attend at the Indian company's factory in India whenever necessary; impart technical training to selected Indian personnel at their works in England or in their associated companies, to enable them to operate the machinery and plant to be installed and to exploit the imported technical know-how to the best advantage;

  (f) advise the Indian company, promptly and to the best of their ability, in connection with any technical or manufacturing problems or difficulties which may be referred to it by the Indian company during the continuance of this agreement.

(2) For technical know-how and data supplied by the U.K. company to the Indian company as above, the Indian company shall make a lump sum payment of Rs ______________________ to the U.K. company phased as follows:

  (a) one-third on approval of the agreement by the Central Government;

  (b) one-third, on the U.K. company supplying the Indian company necessary charts, plans, engineering drawings, documentation and other technical data and know-how, which shall be done within 15 days from the date of approval, of this agreement by the Central Government;

  (c) the balance one-third in three equal annual instalments thereafter after commencement of production.

(3) This Agreement shall be in force for a period of 5 years at the first instance, subject to extension for a further period of 5 years by mutual agreement and subject to approval by the Central Government.

(4) The Indian company may but not bound to use foreign brand names on their products for internal sale or on products to be exported.

(5) There shall be no restriction on the Indian company exporting their products to foreign countries.

(6) The Indian company shall not have the right to pledge, mortgage or assign or to sub-licence the technical know-how, data, engineering designs, layouts etc. to other parties, without the consent in writing of the U.K. company.

(7) There shall be no restraint on the Indian company having their own arrangements for procurement of raw materials, purchase of spares and components and for pricing their products and the sale thereof.

(8) Technicians who may be deputed by the U.K. company to the Indian company to advise and assist the Indian company under this agreement shall be paid their salary, travelling expenses and boarding and lodging by the Indian company.

(9) The Indian company shall likewise bear all the expenses of the persons sent by them to the U.K. company for training in their works under clause 1(f) supra.

(10) The parties hereto mutually agree that they will each inform the other of any new development in design or methods of manufacture which they respectively may discover during the continuance of this Agreement in so far as such new developments are applicable to the products manufactured by the Indian company.

(11) The Indian company shall maintain the utmost secrecy in connection with any technical data supplied by the U.K. company under this Agreement, and in particular shall keep all data concerned with the manufacturing processes under lock and key.

(12) It is agreed that the payment made to the U.K. company shall include the compensation for use of the patent rights for the period of its duration, and that the Indian company shall have the right for the period of its duration the right to manufacture their products even after the expiry of this Agreement.

(13) The Indian company shall not, during the continuance of the Agreement refer any technical or manufacturing problems or difficulties to anyone other than the U.K. company but shall regard and use the U.K. company as its sole technical consultant.

(14) On the expiry of the period prescribed herein or of extended period provided in clause 3 (supra) or upon the termination of this agreement for any reason the Indian company shall return to the U.K. company all copies of information data or material sent to it by the U.K. company under this Agreement and then in its possession, and shall expressly refrain from communicating any such information, technical data or material received by it hereunder to any person, firm or company whatsoever.

(15) The agreement shall be subject to Indian laws.

(16) The agreement shall be subject to the approval of the Government of India.

IN WITNESS WHEREOF the parties hereto have signed this Agreement on this _____ day of ___________, 20_____ in the presence of the following:

____ ____

Mr. ____ Mr. ____

Pursuant to the Board Resolution dated _________________ of Indian Company

Pursuant to the Board Resolution dated _________________ of UK Company

Signature in the presence of:

1 ____

2 ____

(Name and Details of Witnesses)

JOINT DEVELOPMENT RIGHTS AGREEMENT

Present is the age of collaborative science, where the resources of different agencies are collaborated and put together for harnessing the expertise of different agencies. For development of real estate, model of joint development arrangement has emerged as a popular model wherein land owner and developer combine their resources and efforts. In a Joint Development Agreement (JDA), a landowner contributes his land for the construction of a real estate project and the developer undertakes the responsibility for the development of property, obtaining approvals, launching, and marketing the project. This agreement should be registered in the court of law under Section 53A of the Transfer of Property Act. The agreement bounds the landowner and the developer in an agreement for the construction of new projects. In return for the land provided by the former, the latter agrees to provides to some provisions. The developer agrees to provide lump sum consideration, percentage of sales revenue, or a certain percentage of the newly constructed project on the said piece of land. This depends on the terms and conditions, mutually agreed upon by the parties. In this manner, the resources and efforts of land owner and developer are pooled together so as to bring out the maximum productive result. The cost of land in a real estate project entails substantial part of total cost of the project. In such arrangement, developer is not required to make investment for acquiring land at the initial stage and he can utilize his expertise of project development with limited resources in a much efficient manner. On the other hand, land owner, who may not be having requisite experience and expertise for developing the project, gets better price for his land in comparison to what he would have got in the case of outright sale of land. Thus, it creates a win-win situation for both the parties. In fact, it can be said that the joint development arrangement is a commercial arrangement of convenience where in both the parties try to exploit their respective resources in the best possible manner and without much financial investment.

However, the area of Joint development agreement is not restricted to Real Estate only. With the expansion of technology, a joint development agreement can be for a new product or technology. In these types of agreements, prominence is on the research and development of Intellectual Property Rights. A Joint development agreement is also called a strategic alliance agreement.

Drafting of Joint Development Agreement

Drafting of a joint development agreement is a highly specialized job. Both the parties have to ensure that inbuilt safeguards are incorporated to take care of their respective interests. Joint Development Agreement should be drafted in a manner so as to have, *inter alia*, clarity of terms as agreed between the parties, protection of interests of both parties, legal enforceability in case of need, fair exit-route for both the parties in case of any dispute having regard to tax considerations & implications. While drafting Joint Development Agreement, the following points should be carefully observed, which may have legal and tax implications of wide ramifications:

1. In what manner and at what point of time, ownership rights of the land are transferred by the land owner to the developer so as to decide the capital gain tax liability in the hands of the land owner.
2. Whether possession of the land is handed over to the developer in a manner so as to grant license to enter upon and possess land only for the development or the developer enjoys the possession of the land beyond that. Whether there is transfer of ownership/beneficial rights in the land in terms of the provisions of the Transfer of Property Act, 1882.
3. Whether exclusive rights to sell the developed real estate units and enter into buyers' agreement with the customer are granted to the developer under Joint Development agreement or as per other document executed between the land owner and the developer.
4. In what manner sale consideration of the land is determined and paid by the developer to the land owner. Whether sale consideration is determined in monetary terms or in kind or as combination of both and how the timing of the payment of the consideration is settled between them.
5. Whether rights and authority to mortgage the land is granted to the developer to avail the credit facilities from the banks against the security of the land.
6. In what manner and at what point of time, legal title or ownership right of the developed unit is acquired by the customers.
7. Along with the JDA, what kind of other documents, e.g. Power of Attorney, Supplementary Agreement, Memorandum of Understanding, etc. are required to be executed between the land owner and the developer determining or altering their rights & obligations and tax liability under the Income-tax Act and various other laws.
8. Whether the terms provided in Joint Development Agreement may result into creation of a separate legal entity or joint venture in the form of Association of Persons (AOP) or otherwise.
9. Whether any kind of principal-agent relationship or partners' relationship is created between the parties so that the action of one party may affect the rights and obligations of the other party.
10. Applicability and planning of liability under other tax laws, e.g. GST, Service Tax, VAT, Stamp Duty etc.
11. Whether the terms of Joint Development Agreement result into conversion of the land in the hands of the land owner from capital asset to business asset which may alter the chargeability of tax liability in his hands altogether.
12. Whether there are adequate terms in Joint Development Agreement providing dispute resolution mechanism and exit route to both the parties in case the real estate project does not take off in the desired manner.

Specimen Format of Joint Development Agreement

This Joint Development Agreement is made on this ________ day of ______________, 20____ at ________________________.

BETWEEN

____ through its ____________________________________ s/o

______________________ r/o ______________________, hereinafter called the Owner, the First Party

AND

M/S ______________________, acting through its Director ______________ ______ s/o ______________________ r/o ______________________ ___, hereinafter called the Developers, Second Party.

(The expression of the terms Owner and the Developers, whenever they occur in the body of this Agreement shall mean and include their respective heirs, executors, administrators and assign unless and until is repugnant to the context or meaning thereof.)

Whereas the Owner is the recorded Owner and is in possession of plot No. ______________ ______________________, admeasuring _______ sq. yards, the leasehold plot which was registered as Document No. ______ Book No. _______ Vol No. ______ on pages from ______ to ______ dated ____________.The property bounded as under: EAST ____________ Plot No. ___ WEST _________ Plot No. ____ SOUTH ___________ Road NORTH ________________.

AND Whereas the Owner is desirous of erection of a super structure comprising of the basement, ground floor, first floor, second floor and terrace, according to the plans which may be got sanctioned from competent Authority in this regard but is not fully equipped to do so and has therefore approached the Developer which on being assured by the Owner that the said property is free from all sorts of encumbrances, attachments, charges, legal flaws, claims, demands, dues, notices, religious or family disputes, etc., and that the said property is self-acquired property, has agreed to cooperate with the Owner for construction of a super structure on the land beneath the said property, on the terms and conditions that are set forth hereinafter.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. That the Developers have agreed to pay a sum of Rs. ______ (Rupees ___________ only) as security for due performance of the terms of this agreement and success-full completion of the project. However, this security amount shall be adjusted against the consideration on completion of the building. The Developer has agreed to raise the superstructure of basement, ground floor, first floor, second floor and terrace on the land beneath the said property according to the building plans mutually agreed upon between the Owner and the Developers which may be sanctioned from the competent authority.

   The said sum shall be paid in the following manner:

   (a) THAT Rs. ____________ (Rupees ______________________ only) shall be paid at the time of signing the agreement vide Chq No. __________ dated __________ drawn on ________________ Bank ______________ Branch.

   (b) THAT the further sum of Rs. ___________ (Rupees ______________________ ____ only) shall be paid to the Owner by the Developer at the time of handing over the physical possession of the said property after the Developer has got sanction of plans or before ______________, whichever is earlier for the limited purpose of development and construction of the said project. The physical possession for the Developer's portion shall automatically vest with the Developer on completing of the building.

   (c) That the Developer shall pay beside a sum of Rs. ____________ (Rupees ______ ________________ only) already paid, a sum of Rs. ____________ (Rupees

______________________________________ only) to the Owner on completion of the building and at the time of signing of all necessary sale documents in regard to the first floor and second floor, to make the total consideration of Rs. ______________________ (Rupees __________________________ __________________ only).

2. If the Developer defaults in payment of any payment on the due date, the Owner will be entitled to terminate the agreement and to forfeit all moneys paid hereunder. On such termination, the licence to develop the property will be revoked and the Developer shall take away and remove within one month of such termination, all buildings, structures and materials brought on the property and in default thereof, the same shall belong to and vest in the Owner absolutely and the Developer shall not be entitled to any compensation or damages in respect thereof.

   Without prejudice to his rights, the Owner may at his option, condone such default on payment by the Developer and extend the time for payment if the Developer pays interest at the rate of __________ % per annum on the defaulted installment provided that the Owner shall before terminating this agreement as aforesaid, make a demand in writing for payment of the said sum on the Developer. If the Developer pays the amount due to the Owner with interest within _________ days of receipt of such demand, then the Owner shall not be entitled to terminate the Agreement under this clause.

3. The Owner shall sign the necessary documents to enable the Developer to obtain all necessary permissions and sanctions as may be required.

4. That the Owner has executed attorney(s) by separate documents in favour of the Developer for submitting the applications, requisitions to the various authorities for obtaining permission, approvals, sanctions, allotment of building or other materials and concerning other matters required statutorily to be done and required in connection with the construction and completion of the said dwelling units/ floors on the said property. However, the Developers undertake not to cause to be done any act deed or thing which may in any way misuse, contravene any rule, law or regulation or to misuse the powers which may be conferred upon the Developers by the Owner to construct super structure as stated herein above on the land beneath the said building as per agreement.

5. That in the meantime till such sanctions and permissions are forthcoming, the Developers shall have the suitable plans prepared for the proposed residential building at their cost and the concurrence of the Owner shall be obtained with regards to final submission of plans.

6. That the entire cost of construction of the new building including cost of material, labour and the charges for time extension for construction from Delhi Development Authority on above said plot and expenses for clearance from Urban Land Act and fee of the architect and others charges shall be borne and paid by the Developer.

7. That the construction shall be that of specifications, detailed and described in Annexure 1 attached hereto. That the Developers shall utilise the full F.A.R. available in respect of the property to be developed.

8. That the property tax till the execution of this deed shall be payable by the Owner. Any property tax payable thereafter shall be the liability of the Developer and shall be paid by the Developer till the flats are ready in all respects.

9. That the Owner gives licence and permission to the Developer to enter upon the said property with full right and authority to commence, carry on and complete development thereof, in accordance with the permission & terms herein mentioned. The said licence to develop the property will be personal to the Developer and under no circumstance the Developer will assign his title, right and interest to any other party, except with the prior written consent of the Owner. However, the Developer shall be entitled to

enter into separate contracts in his own name with building contractor, architect and others for carrying out the development at his own risk and costs.

10. That the dwelling units proposed to be constructed by the Developer shall be owned and possessed by the parties exclusively as under:

    (a) Owner shall own and possess basement and ground floor and two car parking and two servant quarters with attached toilet of the said property with rear terrace for exclusive use and exclusive complete Ownership right of construction on second floor terrace (i.e., third floor) and right to all future FSI/FAR and right of construction on third floor if permitted by the bye-laws in future, in that case the Owner construct the water tanks on third floor terrace at their/his own cost/fund with 50% undivided land rights of total plot measuring ______________ Sq. Yds.

    (b) The Developer shall own and possess first floor, second floor, two car parking and two servant quarters along with toilet and front terrace for exclusives use, in case of construction of third floor, the Developer/buyers have rights to use front terrace of third floor terrace with 50% undivided land rights of total plots measuring ______________ Sq. Yds.

    (c) It is hereby specifically mentioned that the parties hereto shall be free to sell transfer and/or mortgage, assign or part with the possession of their respective portions at their own risk and account without any objection from the other party and to receive, accept any consideration, money in regards to above property and to issue receipt of full or partial payment. Each party shall have rights to negotiate his respective portion with common facilities to any intending purchaser.

11. The Owner agrees to execute, sign and deliver the document which might be required for conveying first floor and second floor of the said property in favour of the intending purchaser or nominee of Developer as a confirming party when the construction has been completed by the Developer and full consideration has been paid to the Owner. It is hereby specifically mentioned and agreed that the Owner shall not claim any remuneration for execution of the aforesaid documents and all the expenses whatsoever for the transfer of the first floor and second floor of the said property shall be borne and paid by the Developer/his nominee(s)/intending purchaser(s).

12. That the building shall be completed and finished in all respects within _______________ months and the first party's share of property will be handed over to them within _____________ months from the date of sanctioning of plans/handing over the vacant possession of the plot for development, expect for reasons beyond second party's control such as strikes, war, riots and natural calamities and due to any unforeseen circumstances like drastic changes in laws and hindrance caused by concerned authorities.

13. If the Developer fails to complete building and fails to deliver basement and ground floor within stipulated period of _____________ months then Developer shall be liable to give a sum of Rs. ________________ (Rupees ____________________________ only) per month to the party as compensation penalty.

14. That except as herein before provided, the Owner shall not interfere with or obstruct in any manner with the construction of work for the said residential flats. However, the Owner or his nominee or nominees shall have free hand and unfettered access to the construction site at all reasonable time and he shall be free to point out to the Developer or their agents, subcontractors or administrators and the Developer shall rectify such defective construction, workmanship or use of inferior materials.

15. That this agreement shall not to be deemed to constitute a partnership between the Owner and the Developer or an agreement for sale of the plot by the Owner to the Developer and shall not be deemed to bind the parties hereto expect specifically recorded herein. The Developer shall solely be liable and responsible for any liability in connection with the construction of dwelling units in the land beneath the said building. The Owner and the Developer shall be solely responsible from the date of possession

for various expenses, taxes such as water charges, property tax, electric bills in respect of respective portions as mentioned aforesaid.

16. In case there is any accident in the aforesaid construction project, the Developer shall be fully responsible for all the consequences of the same under the Workmen Compensation Act or any other acts in force. If the Owner is ordered to attend a court or is requested or his presence is required by any other authority in this connection, he will empower the Developers to attend the court/authority concerned on his behalf and the Developer agrees to compensate the Owner fully in case an adverse order is passed or any compensation is ordered to be paid by the Owner by any court, judicial authority or any other competent authority.

17. That all costs of stamping, engrossing and registration of this agreement and any other paper relating to this agreement shall be borne by the Developer.

18. That during the course of construction all building materials and equipment used or to be used shall remain at the Developer's risk and the Developer shall not be entitled to any compensation from the first party for any damages, loss or destruction of such works or material or equipment arising from the any cause whatsoever.

19. If until the completion of building any case damage or harm occurs to the adjourning properties, neighbours, the Developer shall be fully responsible for all the consequences.

20. That the Owner has declared and assured the Developer that property is free from all sorts of encumbrances, i.e., mortgage, charges, gifts, wills, exchanges, attachments, injunction notice prior agreement to sell/collaboration agreement and shall also keep the property free from all sorts of encumbrances till the completion of the building, sharing of the respective portions in the new building and registration of their respective portions. Whatsoever if it will be ever proved otherwise, first party shall be liable and responsible for making good all losses, which may be suffered incurred, undergone and sustained all by the Developer as a result thereof.

21. That no change modification or alterations to this agreement shall be done without the written consent of the Owner and Developer. The parties hereto undertake not to contravene any of the terms of this agreement.

22. That the Developer shall be responsible for any eventuality or consequences arising out of the structural defects. Appropriate remedial measures to rectify such defects or remove such irregularities at the earliest shall be taken. The Developer shall also apply and obtain the C&D forms, electricity, water and sewer connections, etc., from the competent authority/authorities concerned at his cost.

23. That as and when house tax gets assessed the Developer undertakes to pay for his share that is the basement and ground floor at the rates applicable.

24. That the Owner shall hand over all the original documents of the property to the Developer at the time of execution of this collaboration agreement. The same shall be returned back to the Owner on completion of the construction and possession of the Developer's portion to him.

IN WITNESS WHEREOF, the parties hereto have set their respective hands on these presents on the date, month and year hereinabove first mentioned. In the presence of the following witnesses:

Signed by the Owner (Name, Signature and Details)	Signed by the Builder (Name, Signature and Details)

Witnesses

1. ______________________________

   (Name, Signature and Details)

2. ______________________________

   (Name, Signature and Details)

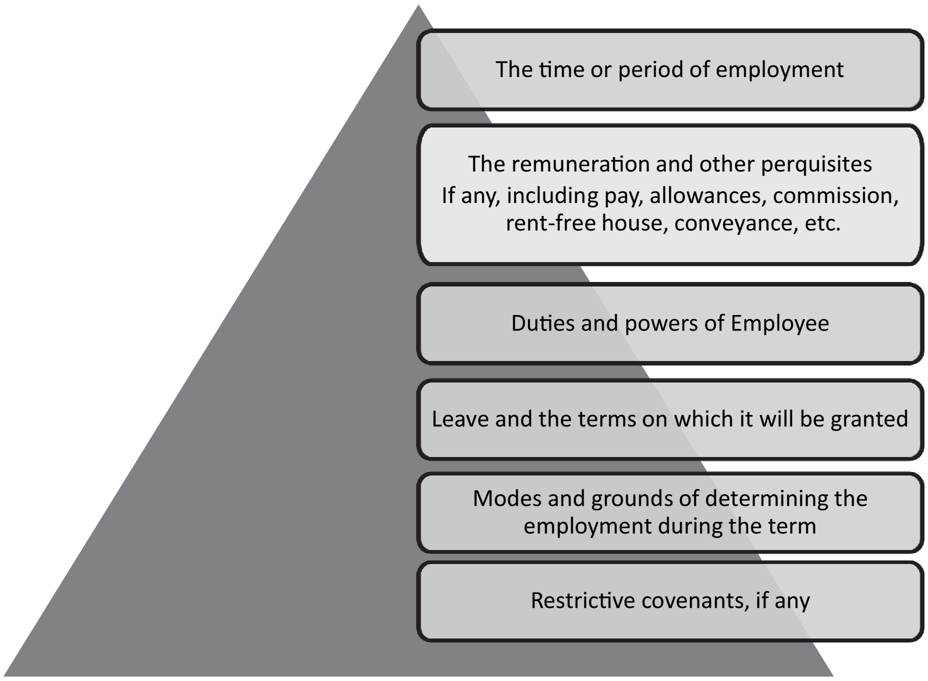
Annexure 1: Specifications

SERVICE AGREEMENTS

Contents of a Service Contract

Service contracts are drafted in the same way as other agreements. The terms of employment should be definitely fixed and clearly expressed and nothing should be left to presumptions. They are required to be both affirmative (describing the acts and duties to be performed) as well as negative (putting restrictions on the acts of the employee during and/or after the term of employment). Important clauses for the service agreements are as under:

Necessary provisions for Service Agreements


The time or period of employment
The remuneration and other perquisites If any, including pay, allowances, commission, rent-free house, conveyance, etc.
Duties and powers of Employee
Leave and the terms on which it will be granted
Modes and grounds of determining the employment during the term
Restrictive covenants, if any

As the employer and the employee may not be conversant with law, the terms of a service contract should be as explicit as possible and should be easily intelligible to a lay man, Unlike other agreements and legal documents which need not contain matters presumed or implied by law, it is better in such an agreement to specify even such matters and all other matters so as to make it a complete code, embodying the rights and duties of each party.

In respect of Government service, normally no formal contract is executed and only an appointment order is issued and the terms of service are thereafter governed by statutory rules and Government order. The same is the position of statutory corporations as employers. For other employment contract, important terms are discussed hereinafter:

1. **Period of Service**: This may be definite or indefinite. If no period is fixed or an indefinite period is stated, e.g., “so long as the parties respectively please”, the contract is terminable by a reasonable notice on either side. What is a reasonable notice varies in different cases, according to the characters of the employment and the general custom, from 15 days to six months. When no term is fixed, it is always proper to provide for determination by notice. In such a case, and also in case option of determination is reserved during the term, the period of notice should be settled and expressed in the agreement.

2. **Remuneration**: Remuneration may be fixed monthly salary, or fees or commission, or salary as well as fees or commission. Sometimes in business firms, employees are allowed a share in the profits in addition to a fixed salary. All these should be clearly provided.

3. **Leave**: Conditions and grounds on which, and the period for which leave may be granted as well as allowance payable during leave should be stated. In the case of Government servants engaged on contract, the leave rules applicable to permanent Government Servants in general may be applied but as there are different rules for different classes of Government Servants those applicable should be clearly referred to, or if they are not lengthy, they may be embodied in the agreement in the form of a covenant.

4. **Determination of Employment**: The grounds for determination of employment should be clearly expressed in the agreement. The grounds on which the employment may be determined during the term are generally misconduct, negligence, or want of medical fitness. Subject to what has been stated earlier, it may also be determined at pleasure by notice, without giving any ground. In the case of misconduct or neglect, no notice is required, but, provision may be made for framing charges and taking defence as in the case of Government Servants. Since an employee is entitled to damages for wrongful dismissal if the termination of the service is not properly made, provision in this respect should be carefully worded.

5. **Restrictive Covenants**: It is usual to include restrictive covenants in the agreement such as that the employer will not undertake any other work or service or that he will not divulge the employer’s secrets or make improper use of his trade secrets or information about the employer’s affairs.

   While drafting restrictive covenants, it is necessary to see that they are not illegal. Agreements in restraint of trade are void under Section 27 of the Indian Contract Act, 1872 and should not be inserted in an agreement.

6. **Effect of Labour Laws:** Many Acts have been passed by the Central or State legislatures relating to the conditions of employment of teachers and other employees of aided schools and colleges and of universities, and of workers in factories and commercial establishments, for e.g. the Factories Act, the Industrial Employment (Standing Orders) Act, the Payment of Wages Act, the Employees’ Compensation Act etc. In drawing up a service contract for such an employee, the provisions of the relevant Acts must be kept in view. Any term of contract contrary to the statutory provisions will be null and void, as it is not open to an employee to contract out of the safeguards provided by the legislature for his protection.

Specimen Agreement of Employment of Manager of a Business Concern

THIS AGREEMENT is made on this _________ day of_______________, 20_____ at ___________________________

BETWEEN

____, acting through its Managing Director ______________________
_________________ (Name with Designation), hereinafter called the Employer, First Party.

AND

____ through its ____ s/o

________________________________ r/o ________________________________, hereinafter called the Manager, the Second Party

(The expression of the terms Employer and the Manager, whenever they occur in the body of this Agreement shall mean and include their respective heirs, executors, administrators and assign unless and until is repugnant to the context or meaning thereof.)

WHEREAS

1. The employer wants to appoint a suitable person to work as manager for his business concern; and
2. CD, the party of the other part, has agreed to serve as manager of the employer for his business concern.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. The manager shall work as such for a term of ________ years from the day of ______________ at________________________ or any other place as desired by the employer.
2. The manager shall give his whole time and attention to the said business and shall use his best endeavour to improve and expand the same and shall in all respects diligently and faithfully obey and observe all lawful orders and instructions of the employer in relation to the conduct of the said business and shall not without his consent divulge any secrets or dealing thereto.
3. The manager shall keep at the place of business at ______________________ proper books of account showing all goods and moneys received and delivered and disbursed by him with necessary particulars of all such transactions and shall duly account for all moneys belonging to the employer and coming into the hands or power of the manager and shall forthwith pay the same to the employer or his bankers for the time being except only such moneys as the manager shall be authorised by the employer to retain for immediate requirements of the said business.
4. The employer shall pay to the manager during the continuance of his engagements and provided he shall duly observe and perform the agreement herein on his part contained the salary of Rs ______________ per month on the first day of every calendar month commencing from the first day of _________________ without any deduction except such as he will be bound to make under the Income-tax law for the time being in force, and shall also pay the manager at the end of each year during the aforesaid period a further sum equal to 5 per cent on the gross sale return for the said year (or on the net profits of the said business for the said year (if any) after making such deductions as are properly made according to the usual custom of the said business in the estimation of net profits) provided always that upon the death or termination of the engagement of the manager before the expiration of the said period of _________ years/ the employer shall forthwith pay to him or his heirs, executors, administrators or other legal representatives, as the case may be, in respect of the services of the manager of the whole or any part of the current month a due proportion of the salary of Rs _______________ per month together with such further sum in lieu of such percentage as aforesaid as shall bear the same proportion to the estimated gross return (net profits) for the then current year as the part of the said year during which he has served, shall bear to the whole year, the gross return (net profits) being calculated on average of the past three years.
5. The employer shall during the continuance of the manager's engagement provide him with a suitable furnished house for residence free of rent, rates and taxes (except the charges for electricity consumed by him or of extra water used by him) and the manager shall reside in the said house.
6. The manager shall make such tour as may be necessary in the interest of the said business or as he may be directed by the employer to make and the employer shall pay him all reasonable expense

actually incurred in undertaking such tours (or a travelling allowance at per mile for all journey by road and first class fare for journeys performed by rail and a halting allowance of Rs ____________________ per diem when a halt of not less than 8 hours is made at one place).

7. The manager shall be entitled during his engagement to leave on full pay for a period equal to 1/11th of the period of service rendered and to a further leave on half pay in case of illness or in capacity to be proved to the satisfaction of the employer for a period of 15 days in one year.

8. Either party hereto may terminate the engagement of the manager at any time before the expiration of the said term of ___________ years on giving or sending by registered post to the other party three calendar months, notice in writing, such notice to be given or sent in the case of the employer to his house at and in case of the manager to his place of business or residence provided by the employer and on the expiration of the said three months from the date of giving or posting such notice, the said engagement shall terminate provided that the employer may terminate the said engagement at any time on payment of three months' pay in advance in lieu of such notice as aforesaid.

9. If the manager at any time willfully neglects or refuses or from illness or other cause becomes or is unable to perform any of the duties under this agreement, the employer may suspend his salary (and sum by way of percentage) during such neglect, negligence or inability as aforesaid and may further immediately terminate the engagement of the manager without giving any such notice or making such payment or salary in advance as hereinbefore provided.

10. The manager will at his own expense find and provide two respectable sureties to the amount of Rs ___________________ each for his good conduct and for the due performance by him of this engagement and if he fails to do so for a period of three months from this date, the employer may terminate his services forthwith.

IN WITNESS WHEREOF, the parties hereto have set their respective hands on these presents on the date, month and year hereinabove first mentioned. In the presence of the following witnesses:

___________________________ ______________________________

Employer Manager

(Name, Signature and Details) (Name, Signature and Details)

Witnesses

1. ________________________________

   (Name, Signature and Details)

2. ________________________________

   (Name, Signature and Details)

Specimen Renewal Agreement of Term of Service of an Employee (Either on old terms or new terms)

THIS SERVICE RENEWAL AGREEMENT is made on this _________ day of_______________, 20_____ at ___________________________

BETWEEN

____, acting through its Managing Director _______________________ _________________ (Name with Designation), hereinafter called the Employer, First Party.

AND

____ through its ____ s/o

________________________________ r/o ________________________________, hereinafter called the Manager, the Second Party.

(The expression of the terms Employer and the Manager, whenever they occur in the body of this Agreement shall mean and include their respective heirs, executors, administrators and assign unless and until is repugnant to the context or meaning thereof.)

WHEREAS the said Second party has served the said Employer as Manager under an agreement between the parties hereto dated the______________________.

AND WHEREAS the term of the said Manager's engagement under the said agreement having expired on the_________________, it has been agreed that the said Employer shall re-engage, the said Manager upon the terms and conditions hereinafter appearing (or, upon the terms and conditions contained in the said agreement dated the_______________).

NOW THESE PRESENTS WITNESS AND THE PARTIES HERETO HEREBY AGREE AS FOLLOWS:

(1) The said Manager shall serve the said Employer as Manager for one year from the ____________________.

(2) ____.

(or, 2. The terms and conditions of the said agreement shall be the same as are contained in the aforesaid agreement of the parties dated ________________ in so far as they may be applicable to the employment under this agreement and all the terms and conditions contained in the said agreement shall be deemed to have been incorporated in this agreement).

(3) etc.

IN WITNESS WHEREOF, the parties hereto have set their respective hands on these presents on the date, month and year hereinabove first mentioned. In the presence of the following witnesses:

____________________ ____________________

Employer Manager

(Name, Signature and Details) (Name, Signature and Details)

Witnesses

1. _________________________

(Name, Signature and Details)

2. _________________________

(Name, Signature and Details)

DEALERSHIP AGREEMENT, DISTRIBUTORSHIP AGREEMENT & FRANCHISE AGREEMENT

Dealership Agreement

A dealership agreement is a legal document that outlines the terms of the contract between a distributor or a vendor and a dealer. A dealer agreement can also govern the business relationship between a general dealer and a vendor. These agreements can get more complex and lengthier depending on the size of the manufacturer and dealers involved in the agreement. A dealership agreement with a larger manufacturer can include obligations of a dealer such as requirements of the facilities, rules around the dealer's employees and personnel selling and requirements for statements and sales reporting. Common sections included in Dealership Agreements are:

- Purpose of the agreement.

- Tenure of the Agreement.
- The obligation of the parties, which may include.
- The procedure of supply and return of goods.
- Promotion and training.
- Invoices and the mode of payment.
- Any restrictions upon the parties.
- Termination of the dealership.

Distributorship Agreement

A distributorship agreement is a legally binding contract between a supplier and a distributor in which the distributor purchases and sells items from the supplier in order to sell them to retailers and/or consumers directly. As a result, the distributor does not hold any stock in the firm. The distributorship agreement describes the parties' rights, expenses, area, and obligations in respect of product distribution The agreement confers on the distributor the right to supply the manufacturer's goods within a region or regions. The basic elements of a distributorship agreement include the term (time period for which the contract is in effect), terms and conditions of supply and the sales territories covered by the agreement. Matters such as remuneration to be paid, insurance; transportation and related risk, duration of the distributorship, legal matters are mentioned in a distributorship agreement. The manufacturer or vendor must also determine whether the distributorship agreement will be exclusive or nonexclusive. In an exclusive agreement, the specified distributor will be the sole distributor with the right to sell the product within a particular geographic region or within multiple regions. If the arrangement is nonexclusive, the manufacturer or vendor may supply other distributors, sometimes competing in the same market. The following is a checklist of factors to be considered when drafting a distribution contract:

- Exclusive Distributor/ Distributors.
- Terms and conditions of sale.
- Term for which the contract is in effect.
- Duration of the agreement.
- Marketing rights.
- Trademark licensing.
- Geographical territory covered by the agreement.
- Performance.
- Reporting.
- Returned goods credits and costs.
- Defects and returns provisions.
- Circumstances under which the contract may be terminated.

Difference between a distribution agreement and a dealer agreement

- A distributor agreement involves the manufacturer and a distributor, while a dealership agreement is between a distributor or a vendor and a dealer.

- Dealers, such as retailers or value-added resellers, buy products from distributors and resell them to their consumers. The distributor operates as an intermediary between a supplier and dealers in a distributor-dealer relationship.
- The scope of both agreements also varies. Distributors are often assigned territorial rights, which may stretch across one or several states, while dealers typically limit their operations to the city or a local community. The investment involved in Distributorship is considerably more than the Dealership. Both distributors and dealers rely on each other. The structure is such that distributors are wholesalers who buy from manufacturers and provide to dealers, whereas the dealers obtain products from the distributors and sell to the public.
- A dealership agreement often outlines the conditions of sales for items acquired from the distributor, as well as the dealer's expected obligations and responsibilities and the circumstances under which the agreement may be cancelled.

Franchise Agreement

A franchise agreement is a legally enforceable contract between a franchisor and a franchisee. These agreements authorise a franchisee to open a franchise site while also granting the ability to use franchise-specific resources such as branding, business methods, and supplier sources. A franchise agreement, like any other contract, is intended to define precise conditions for the parties' relationship. These agreements provide safeguards and duties that benefit both parties. Franchise agreements define the limitations within which franchisees can operate and clarify any financial commitments they have to their franchisors. They also often provide greater safeguards to franchisors than to franchisees. Typically, these types of agreements are unilateral in nature. One of the primary goals of a franchise settlement is to protect the franchise system as a whole. This includes the brand, the integrity of the operating system, and the conduct of franchisees within the mix.

What should a standard franchise agreement include:

1. Basis of the agreement
2. Grant of a franchise
3. The agreement's duration
4. Fee for franchising
5. Operations management
6. Services provided by franchisor
7. Safety of Intellectual Property
8. Training
9. Advertising
10. Limitations relating to defaults and damages
11. Obligations upon expiration
12. Royalties
13. Quality assurance
14. Indemnification
15. Geographic restrictions

16. Insurance
17. Restrictions and non-compete covenants.

Difference between a Distributorship Agreement and a Franchise Agreement

Diffrence areas	***Franchise Agreement***	***Distributorship Agreement***
The method of operation	The franchisee is allowed and encouraged to use the franchisor's trademarks and brand name in ordinary business procedures under the terms of the franchise agreement. To aid the franchisee's success, the franchisor also gives advertising and training assistance. To retain the franchisor's brand identity, a franchisee must follow precise criteria while promoting and selling items.	A distributor is not allowed to use the company's trademarked name when distributing its items. Instead, the distributor does business under its own identity. It serves as a product reseller, but it does not conduct business on behalf of the firm that manufactures the things.
The degree of control	Franchisor has far more influence over the franchisee and the franchisee's management of the franchised firm. An excellent example is a franchisor maintaining continuous quality control over its franchisees, frequently through an operations manual, marketing strategies, inspections, and other processes to guarantee brand standards are maintained across the network.	The supplier has less influence over the operations of a distributor.
Payments	A franchisee pays an initial fee and a continuing royalty to the franchisor in exchange for the right to operate the business under the franchisor's name.	A distributor pays for the items purchased from the supplier.

Specimen of a Dealership Contract

THIS AGREEMENT is made on the _______ day of _______________, 20_____

BETWEEN

ABC Ltd. a company incorporated under the Companies Act, 2013 and having its Registered Office at ________________________________ and its Manufacturing unit at ____________________________________ acting through its Company Secretary, (hereinafter called "the company", which expression shall, unless the context admits otherwise, include its representatives) of the one part

AND

M/s____ a partnership firm comprising Mr________________________, Mr___________________________ and Mr__________________________________ partners, having its main business place at ____ and branches at ______ ____,

_____________________________ and ____ (hereinafter called "the firm" which expression shall unless the context admits otherwise, include the partners, their heirs, executors, administrators, representatives and assigns of the other part).

WHEREAS the company is manufacturing ____;

AND WHEREAS the firm has its own marketing network and is selling goods of various branches and is desirous of selling the goods of the company at a new sales outlet recently taken on rent by it for the purpose and has communicated the same to the company;

AND WHEREAS the company, after having considered the proposal of the firm, has agreed to appoint the firm as its dealer on the terms and conditions as contained in this agreement.

NOW THIS AGREEMENT WITNESSETH AS UNDER:

1. That the company hereby appoints the firm as its dealer to sell its products, more specifically defined in the Schedule to this agreement, in the areas also clearly defined in the said Schedule.
2. The agreement shall remain in force for one year commencing from ____________________ and shall be renewable for similar periods on the agreed terms and conditions.
3. The firm shall keep a minimum stock of ______________________________ pieces each of the company's products to meet the demand of the ultimate users/consumers, which quantity shall be reviewed every quarter in the light of the sales during the previous quarter and the market trends.
4. The company shall supply to the firm its products on fifteen days credit from the date of the invoice and if payments are not made within the credit period shall charge interest at the rate of ________ per cent per annum from the sixteenth day of the invoice till payment.
5. The company shall supply to the firm sufficient quantities of publicity and advertisement material for display at the firm's sales outlet and for distribution in its area of operation.
6. The company shall bear 50% of the cost of maintaining the sales outlet of the firm including rent thereof subject to a maximum of 5% of the invoice value of the firm of all the products of the company, which amount shall be credited to the firm's running account in the books of the company at the end of each quarter.
7. The company and the firm shall settle their accounts every six months and the balance credit/debit shall be squared by making payment by the party owing to the other.
8. The firm shall make all efforts to promote the sale of the company's products and in the event of the company forming an opinion on the basis of sale records that the firm is not properly performing its duty as dealer, the company shall be at liberty to terminate this agreement by giving the firm one month's notice in writing and at the end of the notice period, this agreement shall stand terminated and the parties shall settle their accounts within seven days of such termination.
9. The company agrees and undertake to supply to the firm its products as per the firm's orders and in the event of the company failing to supply the ordered goods within fifteen days of receipt of each purchase order, the firm shall be entitled to terminate the agreement by giving the company one month's notice in writing and at the end of the notice period, this agreement shall stand terminated and the parties shall settle their accounts within seven days of such termination.
10. The firm shall not sell any product of the company at a price higher than the one indicated by the company from time to time.
11. The firm shall be at liberty to appoint sub-dealers, salesmen, commission agents or other sales personnel on salary, commission or any other basis, so long as they function in accordance with the provisions of this agreement and do not do anything which is detrimental to the interest of the company, or the firm and the collective interest of both.

Note: *Any additional terms and conditions of the appointment may be incorporated.*

IN WITNESS THEREOF the parties aforementioned have signed this agreement in the presence of the witnesses:

SCHEDULE OF PRODUCTS

1. ______________________ 3. ______________________

2. ______________________ 4. ______________________

Witnesses:

(1) Name : for ABC Ltd.

Father's Name :

Address : (______________________)

Signature : Company Secretary

(2) Name : Mr______________________

Father's Name : Mr______________________

Address : Mr______________________

Signature :

Partners, M/s______________________

Specimen of a Distributorship Agreement

This MEMORANDUM OF AGREEMENT entered on this ________day of ____________ 20____ at ______________________.

BETWEEN

______________________________________, a company incorporated under the Companies Act, 2013 having its registered office at ______________________________________ (hereinafter referred to as 'A', which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns);

AND

M/s ______________________________ represented by its Sole Proprietor / duly Authorised Managing Partner, Mr./ Ms.____________________________ s/o / d/o / w/o Mr.____________________ ______________, aged ______________ years, having a permanent address at ______________________ ______________________________________ and presently residing at ______________________ ______________________________________ having Trading Business (hereinafter called "DISTRIBUTOR" which expression shall mean and include heirs, executors, administrators and legal representatives of the sole proprietor) of the Other Part.

WHEREAS

1. 'A' is a wholly owned subsidiary of 'A' Investments Ltd. and is engaged in the business of ________________________;
2. 'A' appoints DISTRIBUTORS for sale of the products through Whole Sale outlets.
3. The party of the Other Part is a merchant/trader with familiarization, experience in business with sound financial background.

4. The other party had approached 'A' for the appointment as the DISTRIBUTOR to purchase and distribute the products on a whole sale basis.
5. 'A' has agreed to appoint the party of the Other Part as the DISTRIBUTOR to buy and distribute certain identified products on a whole sale basis on terms and conditions set out herein.

The DISTRIBUTOR is registered with the appropriate Sales Tax Authority at ________________ Local Sales Tax Certificate No ____________________________ dated _________________.

NOW THIS AGREEMENT WITNESSSETH AS FOLLOWS:

1. Distributor

That 'A' hereby appoints the party of the Other Part as the DISTRIBUTOR and the party of the Other Part agrees to act as the DISTRIBUTOR of 'A' and for the products or class of products of 'A' as set out in the schedule hereunder (referred to as the Products/Goods) on the terms and conditions stipulated hereunder. It is being understood between parties that 'A' retains the right to add to or remove specified products from the products listed in the said schedule.

2. Basis of the Agreement

The relationship between the parties shall be that of seller and buyer and not that of principle and agent and the transaction is on principle-to-principle basis not withstanding anything to the contrary that may be contained in this agreement or any correspondence or letters between the parties hereto. Accordingly, the DISTRIBUTOR shall at no point hold himself out as an agent of 'A' and 'A' shall not be responsible for any act omission or commission on the part of the DISTRIBUTOR.

3. Right to appoint other distributor

'A' shall have the right:

(i) To appoint other DISTRIBUTORs in respect of all or any of the Products in the town in which the DISTRIBUTOR is situated and operated as 'A' may deem expedient and necessary.

(ii) To sell all or any of the Products to any other persons at any time in the said town to whom 'A' wishes to sell.

4. Order placement/acceptance

4.1 The DISTRIBUTOR shall place the order with 'A' for supply of the products with remittance as provided in clause 8 herein.

4.2 The quantity ordered for each individual line shall be in multiples of standard pack size of such product which is considered reasonable.

4.3 Receipt by 'A' of remittance against an order shall neither imply acceptance of such order nor shall it imply 'A' has agreed to sell the Products at a price other than the price ruling on the date of dispatch by 'A'.

4.4 All orders for the Products so placed by the DISTRIBUTOR with 'A' shall be subject to acceptance by 'A'. If an order is accepted, 'A' may deliver the Products by such mode of transport, at such times, in such convenient lots and quantities, as 'A' shall in its discretion decide. 'A' shall be entitled at any time after acceptance of an order to cancel the same in whole or in part even though it shall have been partly executed. For this purpose, each lot dispatched against an order shall be deemed a separate contract and the failure of dispatch of one lot shall not vitiate or affect the contract as to other lots. The order shall be deemed to have been accepted by 'A' on the date of dispatch and only in respect of the goods actually dispatched.

5. Terms/Condition

Sales by 'A' of the Products to the DISTRIBUTOR shall be subject to the conditions of this Agreement and also subject to such other terms as may be specified on 'A's official order forms from time to time.

6. Sale price

6.1 The sale of products by 'A' to the DISTRIBUTOR shall be at the rates chargeable as per 'A's price list on the date of dispatch.

6.2 Each lot dispatched against an order shall be invoiced at 'A's prices to DISTRIBUTOR at the prices ruling on the date of dispatch which when so invoiced shall be binding on the DISTRIBUTOR without any previous notice in that regard. 'A' shall be entitled to vary the prices of the products at any time up to the date of dispatch.

7. Maximum retail price

'A' shall be entitled to suggest Maximum Retail Price (MRP) in respect of the resale or disposal by the DISTRIBUTORs of the stock of the Products supplied to the DISTRIBUTOR in orders placed by the DISTRIBUTOR. The DISTRIBUTOR shall not charge in excess of the MRP suggested by 'A' but he may at his discretion charge prices lower than the suggested MRP.

8. Payment

8.1 The sale of the goods by 'A' shall be on payment by RTGS/Demand Draft/cheque against supplies made as may be required by 'A' from time to time. The discretion of 'A' on choice of mode of payment shall be final and binding upon the DISTRIBUTOR.

8.2 Such payment against dispatch shall always be of essence to the transaction, which 'A' may accept to execute in whole or in part on receipt of the written or oral order of supply from the DISTRIBUTOR.

8.3 For the sake of administrative convenience, the DISTRIBUTOR may of his own accord and at his option keep with 'A' – duly signed, crossed 'account payee only' cheque drawn in the name of 'A' India Private Limited, with the direction to 'A' to fill up the amount of the bill/invoice of the goods dispatched/received/and confirmed by the DISTRIBUTOR.

8.4 The signed cheques, until and unless contramanded, shall be deemed to constitute a representation and assurance on the part of the DISTRIBUTOR, to 'A' that the DISTRIBUTOR has sufficient funds with his banker to cover the amount of the cheque.

8.5 The DISTRIBUTOR shall keep with 'A' a continuing security deposit of Rs. ______________ (Rupees ____ only) against which the DISTRIBUTOR shall be paid interest @ 6.50% P.A. Such interest shall be paid to the DISTRIBUTOR once in a year. The security amount is refundable at the time of termination of agreement by either party.

9. Hold the goods in trust

If the DISTRIBUTOR pays the price of the goods by cheque, then the DISTRIBUTOR shall hold the goods or the value thereof in Trust for the benefit of 'A' until the full amount of the cheque is realized.

10. Lien on goods

'A' shall have lien over the goods or the value thereof and /or any other goods/stocks and other materials which are in possession with the DISTRIBUTOR till the receipt of payment by 'A'.

11. Unpaid cheque

Each sale to the DISTRIBUTOR shall be treated as a cash sale and in case the said cheque is not realized within their reasonable period or returned unpaid then the DISTRIBUTOR would replace the said cheque by RTGS /Demand Draft payment only within seven days of intimation from 'A' to the DISTRIBUTOR; failing which 'A' shall initiate legal action and also terminate this agreement if deem necessary by 'A'.

12. Dispatch

Goods will be dispatched by rail, road, and water, according to the availability and suitability of the mode of transport at 'A's discretion. Dispatches by rails will be at railway risk. Dispatches by water where goods are sold at C.I.F. will be insured by 'A's W.P.A. including risk of theft, pilferage and non-delivery ______________.

13. Delivery

Delivery under such contracts of sale by 'A' shall be deemed to be sufficient if 'A' sends to the DISTRIBUTOR railway receipt/ lorry receipt/ bill of lading / delivery order or other document entitling the DISTRIBUTOR to obtain delivery of the products______________________________.

14. Failure to take delivery

On the failure of the DISTRIBUTOR to take delivery within a reasonable period and pay for the goods dispatched or delivered by 'A' upon the terms and conditions of the contract of sale 'A' shall be entitled to sell or dispose of the goods on the account and risk of the DISTRIBUTOR in all respects either by public auction or by private bargain without notice to the DISTRIBUTOR.

15. Claim on quality

The DISTRIBUTOR shall not be entitled to make any claim for an allowance or otherwise in regard to the quality of the goods on the date of dispatch unless notice in writing of the DISTRIBUTOR to make such claim is given to 'A' within seven (7) days after the date the goods arrived at the destination. In default of such notice the goods sold hereunder shall be deemed in all respects to be in accordance with the contract.

16. Distributor service & support

The DISTRIBUTOR shall be primarily responsible for markets/territories covered by his operation in order to provide prompt, equitable and effective distribution services to the customers___________________.

17. Business Promotion

In the terms of the present agreement the DISTRIBUTOR reiterates his commitment to work in promoting 'A's business, brands, products and goodwill. In furtherance of the same the DISTRIBUTOR agrees to support and assist 'A' in the brand/product promotion exercises undertaken from time to time, through sales promotion exercises/schemes/ contests/ trade discounts/ _____________________.

18. Optimum level stocks

To ensure the availability of quality products at optimum levels in the market the parties agree that 'A' may from time to time suggest norms for damaged stock disposal, stock controls, and stock rotation which norms may be verified through a system of reporting as may be decided between the parties from time to time.

19. Information and records

The DISTRIBUTOR will faithfully and correctly, in specified formats, maintain and furnish all such information and data as may be required by 'A' from time to time in order to track sales, consumer demands/preferences, ascertain overall market positions, sales performance of 'A's products.

20. Statutory obligations

The DISTRIBUTOR shall discharge all statutory obligations cast upon him including those under indirect taxation statutes and shall forthwith, upon request, furnish the returns/proof/declarations forms in respect thereof to 'A' failing which, any consequential liability accruing to 'A', 'A' shall be at liberty to adjust appropriate and/or recover the amounts from the DISTRIBUTOR.

21. Secrecy / confidentiality

The DISTRIBUTOR undertakes that all information, arising out-off and in the course of this agreement, pertaining to the sale of the products, including formal records, summaries and reports as mentioned above, shall be treated as confidential information. The DISTRIBUTOR shall use its best endeavour to ensure that the employees who have authorised access to such information shall keep it confidential and in secrecy.

22. Duration of the Agreement and renewal

This Agreement shall be in force unless and until terminated as mentioned in para 23 below

23. Termination

This agreement may be terminated by either Party without assigning any reason by giving 30 days written notice to the other party or in the event of a breach /violation of the any of the terms, conditions and obligations OR by Mutual consent.

'A' can terminate this agreement on the happening of any one or more of the following events:

i. In case of individual or sole proprietary concern, on the death of the individual or sole Proprietor or any change in the status or ownership or conversion to partnership firm or any other form of trading.

ii. ii. In case of Partnership firm, a change in the constitution of the firm by death dissolution, taking in a new partner or dispute among partners *inter-se* or otherwise changing the structure/management of the DISTRIBUTOR business without notice to 'A'.

24. Trademark

a. The DISTRIBUTOR should not use the trade name, logo, trade mark, design, copyright belonging to 'A' or of which 'A' is the proprietor/owner thereof in any way which might challenge or damage the validity or use of trade name, trade mark, design, copyright wrongfully causing injury to 'A's business, reputation & goodwill.

b. The DISTRIBUTOR shall not use adopt/utilize any of 'A's logo, trade mark, design, copyright as a part of any trade name or its or any other corporate name on any other product or literature, pamphlet or except as otherwise expressly the authorized in writing by 'A' _______________.

25. Distributor

It is expressly agreed and understood between the parties that all the staff and personnel employed by the DISTRIBUTOR are and all time be and remain as DISTRIBUTOR's employees.

26. Distributor to return books

On the termination of this agreement the DISTRIBUTOR shall forthwith shall return to 'A' all books, documents, papers, software packages, industrial property and other property of the property in possession of the DISTRIBUTOR.

27. No waiver

Any indulgence shown by ‘A’ or failure on the part of ‘A’ to enforce at any time the provisions of this Agreement shall in no way be construed to be waiver of such provisions or affect ‘A’s right to enforce such provision any time thereafter.

28. Jurisdiction

The DISTRIBUTOR agrees that the place for all goods sold or supplied to him by ‘A’ under this agreement is ________________________________ (Place of Business) and that any suit to enforce the rights of either party under or in respect of this agreement shall be instituted in and tried by a competent court only in the City of ________________________ (Place of Business) and in no other court. The DISTRIBUTOR further expressly agrees to submit to the jurisdiction of such court.

29. Dispute resolution

All disputes between the parties, relating to or arising from this agreement shall in the first instance resolve through mutual discussions by the parties. Any unresolved disputes shall be referred to a mutually appointed Sole Arbitrator.

30. Commissions

In consideration of the services rendered by the Firm, ‘A’ will pay to the Firm Commission & other charges as agreed from time to time.

31. Supersedes previous agreements

This agreement supersedes all previous communications, representations, assurances or agreement either written or oral between the parties hereto or between “The DISTRIBUTOR” and any other Entity to which A’ is a successor.

32. Agreement in duplicate

The agreement is executed in duplicate the original whereof will remain with ‘A’ and the duplicate will remain with the DISTRIBUTOR.

33. Headings / captions

The Headings / Captions to the various sections/clauses are given to facilitate easy location and shall not be referred for construction or interpretation thereof. IN WITNESS whereof the parties hereto have hereunto duly executed these presents the day, month and year first above return.

Signed sealed and delivered by	Signed sealed and delivered by the Distributor, M/s
______________________________	______________________________
‘A’ (through Authorised Representative)	through its Sole Proprietor/ Managing Partner

Witness

1. ____________________________________

2. ____________________________________

Specimen of a Franchise agreement

This agreement is made on this ________ day of ____________, 20_____ at ____________________________.

BETWEEN

M/s ABC Pvt Ltd through its Director Mr _______________________ S/o Shri ___________________________________ having its registered office ____ & Corporate office at ______________ ________________________________ (Hereinafter called the party of the First part or the Company or the Seller).

AND

M/s. ____________________________ through its proprietor Mr. _____________________________ S/o Mr. _____________________________ residing at ____. (Hereinafter called the Party of the Second Part or the buyer).

Whereas the party of the First Part is manufacturing and marketing their readymade garments products "______________________________" & their other brands.

Whereas the party of the Second Part has shown interest for opening a showroom of the party of the First Part which has agreed to appoint the party of the Second Part as its Authorised Buyer.

NOW THIS AGREEMENT WITNESSSETH AS FOLLOWS:

1. That the Party of the First Part hereby appoints M/s_______________________________ the Party of the Second Part as their Operational Brand Franchisee/Consignment Agent and allows it to retail all "_________________________________" & their other brands Products through its showroom which will be opened at ____.
2. The party of the Second Part will not sell the product of any other brands in the Show Room.
3. That the agreement shall come into effect from __________________________ and the Party of the First Part shall dispatch and deliver the goods to the party of the Second Part on sale/purchase basis. The freight of goods sent on consignment shall be borne by the party of the First Part i.e. the goods / products shall be supplied to the party of the Second Part on F.O.R basis by Road Transport only; air freight shall by payable by the party of the Second Part minus subsidy of Road Transport charges.
4. That the party of the Second Part shall be allowed a net Sales Margin of 10% on Selling Price (Net realization) upto a sales target of Rs. 50 lacs (Rupees Fifty Lacs) annually. If the Annual Net Sales Amount exceeds Rs. 50 lacs (Rupees Fifty Lacs) but is less than Rs. 50 lacs (Rupees Fifty Lacs) then the Party of the First Part shall award the Second Part an incentive of 2% (one percent) on entire amount. If the Annual Net Sales Amount exceeds Rs. 50 lacs (Rupees Fifty Lacs) but is less than Rs. 80 Lacs (Rupees Eighty Lacs) then the Party of the First Part shall award the Second Part an incentive of 1% (one percent) on the entire amount. For any amount of Annual Net Sales that exceeds Rs. 80 (Rupees Eighty Lacs) an additional 1% (one percent) of the entire amount will be paid as incentive by the party of the First Part.
5. Calculation for basic Sales Margin will be done monthly. Incentives on the Annual Net Sales, if it exceeds Rs. 50 Lacs (Rupees Fifty Lacs) will be determined at the end of the year.
   (a) That the party of the Second Part shall deposit total Net Realization Value (i.e. gross sales including GST/VAT) payment with the party of the First Part in respect of the goods sold on daily basis. This procedure has to be strictly followed. Any delay in depositing the payment for more than 3 working days will attract interest @ 24% p.a. & if the payment is delayed more than 7 days the party of the Second Part will be treated as defaulter.

(b) It is mandatory to send monthly sales and bank deposits showing balance "NIL" on the end of the month before 5th of the next month by the Party of the Second Part as per performa attached herewith by the Party of the First Part.

In case of non-deposit/payment of the daily sales proceeds into the bank account of the party of the First Part, the First Party holds the right to withhold the Sales Margin cheque due towards the Second Party until that time when the Second Party releases the payment of all due amount till the latest date.

6. The store has minimum covered area of 500 Sq. ft.

7. That the party of the Second Part shall arrange the furnished premises as per design and maps provided by the Party of the First Part at their own expenses for the purpose of Brand Retail Showroom of the product under the brand names of "___________" & their other brands only.

8. Operating and staffing expenses

a) The party of the Second Part alone shall be responsible for and shall bear all recurring charges and expenses, whatsoever, incurred or to be incurred in carrying on their business without prejudice to the generality of the foregoing, the Second Party shall pay:

- All rates and taxes and other outgoing payable to the local authorities in respect of their office and storage premises.
- All wages and salaries of the employees/employed in the showroom, all day-to-day expenses, courier, maintenance & running expenses and miscellaneous expenses for operating the showroom.
- All charges in connection with the up-gradation of the computer hardware and peripherals such as printers, scanners, modem, etc.
- All rent and related ancillary expenses of the office or storage premises.

(b) The Second Part shall at its own expense and cost employ / engage as many suitable personnel as the first part may consider necessary (i.e. one sales person per 300 sq.ft of shop area) for maintaining the premises, for displaying the stock and for carrying out other functions in order to provide efficient services to the customers.

The First Party shall (if it feels necessary) assist the Second Party in the selection, recruitment and training of such personnel. The second party shall bear all salaries, expenses and contributions including statutory contributions in respect of such personnel and it is agreed that they shall at no point of time be or construed to be the employees of the Company (party of the First Part).

(c) The Second Party shall use only such software stationery, letterheads, name board and other items as have been either supplied by the Company or approved for use by the Company in writing.

(d) The Second Party shall not at any time release advertisements in newspapers or other publications, brochures, pamphlets, direct mail, etc or undertake any other form of sales promotion in the name of or on behalf of the Company except in the form and manner approved by the Company in writing.

9. That their shall be some sales through credit card for which the First Party shall bear the commission which is as actual as charged by the Card Agency. The First Party shall pay this amount of commission to the concerned bank on monthly basis.

10. Stocks to be adequately insured for all risk (earthquake, fire, riots) with the policy stating the beneficiary being the first part in event of any claim. The cost of all such insurance will be borne by First Party. In the unfortunate event that any damage shall be incurred by the Party of the Second Part due to such force majeure the liability of the total extent of the damage done is the sole responsibility of the Party of the Second Part and in the event that a settlement claim shall be received from the Insurance company by the Party of the First Part, such amount shall be credited to the Second Part's account.

11. That the Second Party shall deposit the local GST/VAT amount as per Jammu & Kashmir State GST/VAT Rules & maintain all the records of the same. The First Party will reimburse this GST/VAT amount to the Second Party. The Party of the Second Part will be responsible to pay GST (Goods and Service Tax) on their GST no. against E-Way Bill . The party of the First Part hold the right to keep in abeyance such amount equivalent to 4% of the Value of the Goods sent for which the Part of the Second Part fails to provide the Party of the First Part the necessary 'Any' Forms.

12. That the working will be on simple sale purchase basis and credit notes will be issued in case of any goods return on the basis of debit note raised by the party of the Second Part and sent with the return documents as per the performa being given by the company.

13. The First party will be liable to reimburse only GST/Vat calculated as per law prevailed at that time. All other taxes including Service Tax (if applicable), etc. will be paid by the Second Party. The Party of the Second Part is liable to bear ½ or 50% of the GST (Goods and Service Tax) paid by the First Party for selling the goods to the Second Party. If due to unawareness or negligence on the part of the Second Party any liability arises or becomes due, the First Party will not be responsible for that in any manner.

14. Ownership and custody of goods

    - It is specifically understood and agreed by and between the parties that at all times the Company shall be the sole and exclusive owner of the Products supplied by the First Party to the Second Party under this agreement and/or in the possession of the Second Party or in transit. Nothing herein contained shall be deemed or intended to create any proprietary rights on the Products in favour of the Second Party. The products shall always belong to and remain in the judicial custody of the First Party.
    - The Second Party shall not have or claim any right, title, interest, claim or demand in the products entrusted to them and they shall not have any lien or any other claim whatsoever in or upon the Products.
    - The Second Party shall not purport to hypothecate, create any right whatsoever in respect of the products entrusted to them under this Agreement.
    - The Second Party shall not pledge, loan, gift or in any other manner deal with or dispose of or destroy the products or do any act, deed or thing whereby any right, title or interest of the First Party in the products entrusted to the Second Party are in any manner adversely affected.
    - The Second Party shall ensure proper and safe custody of the stock of the First Party.
    - The First Party shall be entitled to conduct physical stock verification of the stocks and/or the books of accounts maintained by the Second Party either by its own employees or by the auditors or through any other person authorized by the Co., periodically or at any time as may be convenient during a working day. In the event of there being any difference between the physical stock and the stock as per the books of the First Party, then the value of such stocks at the M.R.P. less Sales Margin shall be compensated to the First party in addition to the interest of 2% per month for the period between the last reconciliation/business commencement date till the day such shortage was found. Such amount shall be deposited in the Bank immediately, failing which the amount

involved along with the interest shall be recovered from the Sales Margin payable to the Second Party by the First Party.

15. (a) That the second party shall be responsible for any shortage or loss due to the pilferage or damage to the goods. However, the second part shall not be held for the damages / loss that may be incurred due to reasons beyond their control i.e. fire, riots, natural calamities like flood, earthquake , etc. which would be covered by Insurance Company and claims payable to the first party. In the case of theft, burglary and robbery the total value of the goods stolen is the responsibility of the party of the Second Part.

    (b) That in the event of any loss / damages arising due to fire, earthquake ,riots or any other force majeure conditions may be, the party of the First part shall not be liable any damages to the building and no Sales Margin will be paid to the Party of the Second Part for the period till the building becomes usable for the purpose of business of the Party of the First Part.

16. That The party of the Second Part will give refundable interest free security deposit of Rs.7,00,000 (Rs. Seven Lacs Only) which will be refunded only when the agreement is terminated by the party of the First Part provided NO dues are outstanding by the Second Party (Daily Sales Amount, Furniture purchase, etc.)

17. That the party of the Second Part agrees and undertakes to keep four without dated cheques of Rs.250000/- each aggregating to Rs.10 lacs as security with the party of the First Part during the tenure of this agreement. The party of the First part shall be entitled to cash the said cheques in case of default in payment of its liabilities by the party of the Second Part in accordance with the Law.

18. That party of the Second part shall be responsible for all the insurance of furniture, fixture, interior, air conditioner, cash-in-hand at the shop, office equipment etc. of the shop. However, the cost of all such insurance shall be borne by the second party. The copy of such policy shall be provided to the party of the First Part.

19. That the party of the Second Part shall maintain proper records which includes books of accounts and stock showing the sales made and the stock lying with them in respect of the goods dispatched under this agreement and shall send every month a sales & stock statement to the party of the First Part along with Trial Balance up to 7th of next month. In order to clear the non-saleable stocks lying with the party of the Second Part / showroom the party of the First Part can ask the party of the Second Part for organizing the clearance sale.

20. That in the case of this agreement being terminated the party of the First Part shall buy back all the non-saleable stock from the Second Party at the price charged by the First Party in the invoice. In case the Second Party terminates the agreement within 3 years the party of the First Part in not liable to buy back the stock lying at their shop.

21. That this agreement is valid for the period of 3 years from March 1st 2020. The party of the Second Part will be locked in for a period of 3 years. If the party of the Second Part terminates the agreement before the expiry of 3 year then it will have to bear the cost of In-store branding, Glow Signboard, Software Wizapp cost, 50% Advertising costs in newspapers & cable TV and other media used for the benefit the franchisee's sale as well as full transportation costs to and from franchisee's store location and reshelving fee of 10% of goods sent back.

    If the party of the Second Part fails to send the party of the First Part daily sales data and the Cash deposits for a period of more than one (1) month then the party of the First Part retains the right to terminate the agreement and confiscate the interest free security deposit given by the party of the Second Part. On termination of this agreement by the party of the First Part, the party of the Second Part shall hand over all the stocks lying with them to the party of the First Part immediately and all accounts shall have to be cleared with the party of the First Part in respect of the goods sold and shortages or loss if any.

22. That the party of the First Part shall maintain a total stock quantity of 2000 pieces of garments and accessories at all times. Stock quantity at this location shall be voluntarily increased by the First Party according to the monthly average pieces sales ratio.

23. That the party of the First Part will supply the stationery / packing material to the party of the Second Part from time to time, free of cost, to promote the sales and facilitate the customers.

24. That all the expenses at any stage in all conditions and circumstances of advertisements like Banners, hand bills, through radios / A.I.R., Cables, TV, Posters, Hoarding, Newspapers, Newsprint, Magazines etc. shall be borne and arrange by the party of the First Part to promote the sales of the product of the Company, albeit not exceeding 3% of the Net Sales till the time such expenses are met.

25. That party of the Second Part can't sell products at a price higher than maximum retail price quoted on the products. However, discounts/clearance sales will be allowed to customers from time to time with instructions/policies of the party of the First Part.

26. That the party of the Second Part will make no sales to dealers/whole sellers.

27. In the event of the failure of the party of the Second part to comply with the above provisions or to provide proper services to the customers, the Party of the First Part shall be entitled to terminate the agreement without any prior notice and giving sufficient evidence to prove the failure of the Party of the Second Part.

28. The party of the Second Part shall open the "____________________" Brand Show Room in all 7 days of the week and, if required the party of the Second Part shall take prior approval for opening the shop from the concerned authorities.

29. That any violation in the above terms and conditions shall give the right of termination of this agreement to the party of the First part. On termination of this agreement, the party of the Second part shall hand over all the stocks with them to the Party of the First part immediately and full accounts in respect of the goods sold and shortages or loss if any.

30. Any dispute arising from or in connection with this Agreement shall be settled by amicable efforts from the parties to the dispute or / otherwise it may be referred to arbitration. In case of arbitration, it shall be referred to Mr. A who is a pre-approved arbitrator by both the parties and the proceedings of such an arbitration will only be held in Delhi. Such an Arbitration proceeding will adhere to the Arbitration and Conciliation Act, 1996. The competent court in Delhi alone shall hereby have jurisdiction in respect of all matters arisen out of this Agreement or Arbitration.

31. This agreement is done with the aide and help of Mr. D who takes full responsibility of stock shortages and reconciliation, meeting sales targets and Retail Costs, daily data transfer, supply of any Forms, collection and deposition of daily Sales proceeds in ABC PVT LTD.'s bank account.

32. There are two identical copies of the same agreement printed on Indian Non-Judicial Stamp paper nos. __________and_________ In the event that either of them differs then the final agreement copies that both parties will have to adhere to will be Stamp paper no. ___________.

33. All disputes arising under or out of this Agreement or in any way connected with this Agreement shall be subject to the jurisdiction of the courts of ________________________.

IN WITNESS WHEREOF, the parties have this ____________ day of ______________, 20_____ caused their respective seals to be affixed on this Agreement.

For FRENCHISER ABC PVT LTD For

(Authorised Signatory) (Authorised Signatory)

IN PRESENCE OF

Witness 1______________________________________

Witness 2 ______________________________________

OUTSOURCING AGREEMENTS

Outsourcing is the contracting out of a company's activities to specialists. It differs from contracting in that outsourcing is a strategic management tool that involves the restructuring of an organization around what it does best - its core competencies.

Two common types of outsourcing are Information Technology (IT) outsourcing and Business Process Outsourcing (BPO). BPO includes outsourcing related to accounting, human resources, benefits, payroll, and finance functions and activities. Knowledge Process outsourcing (KPO) includes outsourcing related to legal, paralegal, and other highly skilled activities. A good outsourcing agreement is one which provides a comprehensive road map of the duties and obligations of both the parties - outsourcer and service provider. It minimizes complications when a dispute arises. However, many a times people neglect to pay attention while drafting an outsourcing agreement. Before finalizing an outsourcing agreement, the terms should be thoroughly discussed and negotiated to avoid any misunderstanding at a later stage. It is advisable to consult a professional before finalizing any outsourcing agreement.

Before signing an outsourcing agreement, the following factors must be properly addressed:

- Duties and obligations of Outsourcer
- Duties and obligations of service receiver
- Security and confidentiality
- Legal compliance
- Fees and payment terms
- Proprietary rights
- Auditing rights
- Applicable law to outsourcing agreement
- Term of the Agreement
- Events of Defaults and Addressing
- Dispute Resolution Mechanism
- Time limits
- Location of Arbitration
- Number of Arbitrators
- Interim measures/Provisional Remedies
- Privacy Agreement

- Non-compete Agreement
- Confidentiality Agreement
- Rules Applicable
- Appeal & Enforcement
- Be aware of local peculiarities
- Survival terms after the termination of the outsourcing agreement.

Every outsourcing agreement should be modified as applicable under different circumstances. [*Source: www.madaan.com)*

A Specimen of Outsourcing Agreement for Converting Hard Copies of a Book in a Compact Disc (CD)

This Agreement for the conversion of the book titled “Intellectual Property Protection in India” is executed on ________ day of ______________________, 20_____ at ___________________

BY AND BETWEEN

The Silvername Law Publishing Co. Pvt. Ltd. having their Office at ______________________________ represented by Mr _____________________ Manager, Silvername Law Publishing Co. Pvt. Ltd. (hereinafter referred to as ‘the SLP Pvt. Ltd.)

AND

M/s Redwell Web Services Pvt. Ltd, a Company registered under the Companies Act having their office at ______________________________ and represented by Mr _______________________ Director, M/s Redwell Web Services Pvt. Ltd, (hereinafter referred to as the M/s Redwell Pvt. Ltd.)

WHEREAS the SLP Pvt. Ltd. has published the book Intellectual Property Protection in India it has decided to convert the hard copies of above mentioned book into a soft copy version by getting the book digitized and thereafter put the contents of the book in a CD (Compact Disc) along with a Search Engine. The SLP Pvt. Ltd. floated a tender for this book vide tender document with closing date _______________________ and after evaluating the bids of various parties, the SLP Pvt. Ltd. has decided to award the project to M/s Redwell Pvt. Ltd. on the following terms and conditions:

(1) M/s Redwell Pvt. Ltd. would perform the job of digitisation (of the relevant portions marked for digitization) of the book including Data punching / Scanning, OCR Validation, Proof-reading (at an accuracy level of 99.9%), Tagging according to search parameters, Linking, Indexing etc.

(2) M/s Redwell Pvt. Ltd. would be developing a search engine as per the SLP’s requirement. The search engine would be licensed to the SLP Pvt.Ltd. for its perpetual use. The SLP Pvt. Ltd. would further be free to use this Search Engine for any purpose and would not be liable to pay to M/s Redwell Pvt. Ltd. any additional amount for such usage.

(3) The copyright of the contents of the CD, marketing rights and all other rights pertaining to the said CD would solely vest with the SLP Pvt. Ltd.

(4) M/s Redwell Pvt. Ltd. undertakes to complete the assignment within a period of 100 days from the date of execution of this agreement.

(5) After the completion of the job M/s Redwell Pvt. Ltd. would give sufficient training including technical aspects (relating to the features of the search engine developed by the M/s Redwell Pvt. Ltd. to the people deputed by the SLP Pvt. Ltd. to facilitate to use the search engine independently. The training must be up to the satisfaction of the SLP Pvt. Ltd. in all aspects.

(6) M/s Redwell Pvt. Ltd. would hand over the digitized contents of the book to the SLP Pvt. Ltd. after the completion of the job.

(7) The total project cost to be paid to M/s Redwell Pvt. Ltd. would be as follows.

(a) Cost of developing the Search Engine – Rs____________(Rupees______________________________ only)

(b) Digitization cost for each page (in hard copy) – Rs ____________________ per page

(c) Conversion cost for each page (in soft copy) – Rs ______________________ per page

(d) Total cost of each CD including the manual, jewel case, packing, printing and security features – Rs ___________________________ per CD

It is to be noted that the original CD lot would be of 750 CDs only.

For the purpose of page count, 50% or more coverage would be treated as one full page and less than 50% would be ignored and would not be taken in counting.

(8) M/s Redwell Pvt. Ltd. would not be paid any advance money for undertaking the job. M/s Redwell Web Services Pvt. Ltd. would however be paid 25% of the total project cost after the stage of completion of the Master CD and subject to the satisfaction of the SLP Pvt. Ltd.

(9) M/s Redwell Pvt. Ltd. agrees to keep the hard copies of the book given for digitization in good shape. M/s Redwell Pvt. Ltd. has however been allowed to mark the relevant portions required for search taggings with special marks.

(10) For updating the CD, the SLP Pvt. Ltd. reserves the right to either conduct the updation in part on its own or the SLP Pvt. Ltd. may assign this job to M/s Redwell Pvt. Ltd. or any other agency. If the SLP Pvt. Ltd. decides to assign this job to M/s Redwell Pvt. Ltd., the cost would be as follows:

(a) Content assimilation, Software upgradation and Annual Maintenance charges – Rs. __________________________ per annum

(b) Conversion cost of each page (in soft copy) – Rs__________ per page

(c) Total cost of each CD including the manual, jewel case, packing, printing and security features – Rs___________ per CD (subject to a minimum lot of 1000 CDs)

(11) Both the parties i.e. The SLP Pvt. Ltd. and M/s Redwell Pvt. Ltd., agree to abide by all remaining terms and conditions of the original tender document floated by the SLP Pvt. Ltd. for the said job.

(12) Any notice or request or communication given or required to be given under this contract shall be given to:

In case of M/s Redwell to:

Mr. ____________________, Director, M/s Redwell Web Services Pvt. Ltd. (Give Address) ___________________________

In case of SLP Pvt. Ltd. to:

Mr__________________________________, Manager, Silvername Law Publishing Co. Pvt. Ltd. (Give Address) ________________

(13) M/S Redwell PRIVATE LIMITED HEREBY FURTHER COVENANTS AND AGREES to indemnify and keep at all times indemnified the SLP Pvt. Ltd. against any loss or damage that the SLP may sustain as a result of the failure or neglect of M/s Redwell to faithfully carry out its obligations under this

agreement and further to pay for all losses, damages, costs, charges and expenses which the SLP Pvt. Ltd. may reasonably incur or suffer and to indemnify and keep indemnified the SLP Pvt. Ltd. in all respects.

(14) This Agreement can be terminated by the SLP Pvt. Ltd. by giving three month's notice in writing in the event of failure of M/s Redwell Pvt. Ltd. for adhering to time schedules / unsatisfactory execution of the conversion of the book or quality of output or requisite training not given to the people deputed by the SLP Pvt. Ltd or for any other reasonable cause and under such notice period, the performance of the project shall continue in operation by both the parties.

(15) FORCE MAJEURE : If at any time during the continuance of this contract, the performance in whole or in part by either party or any obligation under this contract is prevented or delayed by reason of any war, hostility, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts, power failure or acts of God (herein after referred to as events) provided notice of the happenings of any such event is given by either party to the other within 21 days from the date of occurrence thereof, neither party shall by reason of such events, be entitled to terminate this contract nor shall either party have any claim for damages against the other in respect of such nonperformance or delay in performance, and deliveries under the contract shall be resumed as soon as practicable after such event has come to an end or ceased to exist, provided further that if the performance in whole or part of any obligation under this contract is prevented or delayed by reasons of any such event for a period exceeding 180 days, both parties shall consult each other regarding the termination of the contract on agreed equitable terms or otherwise devise future course of action.

(16) All disputes, claims and demands arising under or pursuant to or concerning this contract shall be referred to the sole Arbitrator to be appointed by the Chief Manager, SLP Pvt. Ltd. The award of the sole Arbitrator shall be final and binding on both the parties. The arbitration proceedings shall be held under the provisions of the Arbitration and Conciliation Act, 1996 as amended till date. The place of arbitration shall be ______________.

(17) The Courts at ______________________ (Mention the name of the place) alone shall have jurisdiction to adjudicate any dispute arising between the parties under this agreement.

(18) Notwithstanding anything contained in this agreement, the parties agree that any terms of this agreement may be varied by way of supplementary deed/agreement. Such supplementary agreement/deed shall be effective only if it is in writing and signed by duly authorised representatives of both the parties.

IN WITNESS WHEREOF the parties hereto have set their respective hands to the agreement on the day, month and the year mentioned herein above.

Signed and Delivered By:

On behalf of M/s Redwell Web Services Pvt. Ltd.	On behalf of SLP Pvt. Ltd.
Name:	Name:
Designation:	Designation:
Place:	Place:

In the presence of witnesses:

1.

2.

NON-DISCLOSURE AGREEMENT

A non-disclosure agreement (NDA) which is sometimes also referred to as a "Confidentiality Agreement" is a legally binding contract that establishes a confidential relationship. The party or parties signing the agreement agree that confidential/sensitive information they may obtain will not be made available to any others. An NDA may also be referred to as a confidentiality agreement. The NDA serves a purpose in a variety of situations e.g. NDAs are generally required when two companies enter into discussions about doing business together but want to protect their own interests and the details of any potential deal. In this case, the language of the NDA forbids all involved from releasing information regarding any business processes or plans of the other party or parties. The key elements of Non-Disclosure Agreements:

- Identification of the parties
- Definition of what is deemed to be confidential
- The scope of the confidentiality obligation by the receiving party
- The exclusions from confidential treatment
- The term of the agreement.

Specimen of Non-disclosure Agreement

THIS NON-DISCLOSURE AGREEMENT (Agreement) IS MADE AND ENTERED ON THIS THE __________ DAY OF __________, 20______

BY AND BETWEEN

(1) ______________________________________ a company incorporated under the Companies Act, 2013 with CIN _____________________________ and having its registered office at __________________________________ (hereinafter referred to as "**Company**",)

AND

(2) ____ a company incorporated under the Companies Act, 2013 with CIN ______________________________ and having its registered office at ___________________ _________________ (hereinafter referred to as "**Corporation**")

(**COMPANY** and **CORPORATION** shall hereinafter be referred to as such or collectively as "Parties" and individually as "Party".)

WHEREAS both the Parties herein wish to pursue discussions and negotiate with each other for the purpose of entering into a potential business arrangement in relation to ______________________________ ("Proposed Transaction");

AND WHEREAS the Parties contemplate that with respect to the Proposed Transaction, both the Parties may exchange certain information, material and documents relating to each other's business, assets, financial condition, operations, plans and/or prospects of their businesses (hereinafter referred to as "Confidential Information", more fully detailed in clause 1 herein below) that each Party regards as proprietary and confidential; and

AND WHEREAS, each Party wishes to review such Confidential Information of the other for the sole purpose of determining their mutual interest in engaging in the Proposed Transaction.

IN CONNECTION WITH THE ABOVE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. "Confidential and or proprietary Information" shall mean and include any information disclosed by one Party (Disclosing Party) to the other (Receiving Party) either directly or indirectly, in writing, orally, by

inspection of tangible objects (including, without limitation, documents, prototypes, samples, media, documentation, discs and code). Confidential information shall include, without limitation, any materials, trade secrets, network information, configurations, trademarks, brand name, know-how, business and marketing plans, financial and operational information, and all other non-public information, material or data relating to the current and/ or future business and operations of the Disclosing Party and analysis, compilations, studies, summaries, extracts or other documentation prepared by the Disclosing Party. Confidential Information may also include information disclosed to the Receiving Party by third parties on behalf of the Disclosing Party.

2. The Receiving Party shall refrain from disclosing, reproducing, summarising and/or distributing Confidential Information and confidential materials of the Disclosing Party except in connection with the Proposed Transaction.

3. The Parties shall protect the confidentiality of each other's Confidential Information in the same manner as they protect the confidentiality of their own proprietary and confidential information of similar nature. Each Party, while acknowledging the confidential and proprietary nature of the Confidential Information agrees to take all reasonable measures at its own expense to restrain its representatives from prohibited or unauthorised disclosure or use of the Confidential Information.

4. Confidential Information shall at all times remain the property of the Disclosing Party and may not be copied or reproduced by the Receiving Party without the Disclosing Party's prior written consent.

5. Within seven (7) days of a written request by the Disclosing Party, the Receiving Party shall return/ destroy (as may be requested in writing by the Disclosing Party or upon expiry and or earlier termination) all originals, copies, reproductions and summaries of Confidential Information provided to the Receiving Party as Confidential Information. The Receiving Party shall certify to the Disclosing Party in writing that it has satisfied its obligations under this paragraph.

6. The Receiving Party may disclose the Confidential Information only to the Receiving Party's employees and consultants on a need-to-know basis. The Receiving Party shall have executed or shall execute appropriate written agreements with third parties, in a form and manner sufficient to enable the Receiving Party to enforce all the provisions of this Agreement.

7. Confidential Information, however, shall not include any information which the Receiving Party can show:

    i) is in or comes into the public domain otherwise than through a breach of this Agreement or the fault of the Receiving Party; or

    ii) was already in its possession free of any such restriction prior to receipt from the Disclosing Party; or

    iii) was independently developed by the Receiving Party without making use of the Confidential Information; or

    iv) has been approved for release or use (in either case without restriction) by written authorisation of the Disclosing Party.

8. In the event either Party receives a summons or other validly issued administrative or judicial process requiring the disclosure of Confidential Information of the other Party, the Receiving Party shall promptly notify the Disclosing Party. The Receiving Party may disclose Confidential Information to the extent such disclosure is required by law, rule, regulation or legal process; provided however, that, to the extent practicable, the Receiving Party shall give prompt written notice of any such request for such information to the Disclosing Party, and agrees to co-operate with the Disclosing Party, at the

Disclosing Party's expense, to the extent permissible and practicable, to challenge the request or limit the scope there of, as the Disclosing Party may reasonably deem appropriate.

9. Neither Party shall use the other's name, trademarks, proprietary words or symbols or disclose under this Agreement in any publication, press release, marketing material, or otherwise without the prior written approval of the other.

10. Each Party agrees that the conditions in this Agreement and the Confidential Information disclosed pursuant to this Agreement are of a special, unique, and extraordinary character and that an impending or existing violation of any provision of this Agreement would cause the other Party irreparable injury for which it would have no adequate remedy at law and further agrees that the other Party shall be entitled to obtain immediately injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it at law or in equity.

11. The Receiving Party shall indemnify the Disclosing Party for all costs, expenses or damages that Disclosing Party incurs as a result of any violation of any provisions of this Agreement. This obligation shall include court, litigation expenses, and actual, reasonable attorney's fees. The Parties acknowledge that as damages may not be a sufficient remedy for any breach under this Agreement, the non-breaching party is entitled to seek specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach, in addition to any other remedies at law or in equity.

12. Neither Party shall be liable for any special, consequential, incidental or exemplary damages or loss (or any lost profits, savings or business opportunity) regardless of whether a Party was advised of the possibility of the damage or loss asserted.

13. Both the Parties agree that by virtue of the Parties entering into this Agreement neither Party is obligated to disclose all or any of the Confidential Information to the other as stated in this Agreement. The Parties reserve the right to disclose only such information at its discretion and which it thinks, is necessary to disclose in relation to the Proposed Transaction.

14. Both the Parties agree that this Agreement will be effective from the date of execution of this Agreement by both Parties and shall continue to be effective till the Proposed Transaction is terminated by either Party by giving a thirty (30)days notice, in case either Party foresees that the Proposed Transaction would not be achieved.

    Notwithstanding anything contained herein, the provisions of this Agreement shall survive and continue after expiration or termination of this Agreement for a further period of five year(s) from the date of expiration.

    It being further clarified that notwithstanding anything contained herein, in case a binding agreement is executed between the Parties in furtherance of the Proposed Transaction, the terms and conditions of this Agreement shall become effective and form a part of that binding agreement and be co-terminus with such binding agreement and shall be in effect till the term of such binding agreement and shall after its expiry and or early termination shall continue to be in force in the following manner:

    i. _______________ years after the termination of the binding agreement

    ii. _______________ years after the expiry of the binding agreement

    (whichever is earlier).

15. Each Party warrants that it has the authority to enter into this Agreement.

16. If any provision of this agreement is held to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected and each provision hereof shall be valid and enforceable to

the fullest extent permitted by law. Any invalid or unenforceable provision of this Agreement shall be replaced with a provision that is valid and enforceable and most nearly reflects the original intent of the unenforceable provision.

17. This Agreement may be executed in two counterparts, each of which will be deemed to be an original, and all of which, when taken together, shall be deemed to constitute one and the same agreement.
18. The relationship between both the Parties to this Agreement shall be on a principal-to-principal basis and nothing in this agreement shall be deemed to have created a relationship of an agent or partner between the Parties and none of the employees of COMPANY shall be considered as employees of PARTY 1.
19. This Agreement shall be governed by the laws of India. Both parties irrevocably submit to the exclusive jurisdiction of the Courts in Bangalore, for any action or proceeding regarding this Agreement. Any dispute or claim arising out of or in connection herewith, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the provisions of Procedure of the Indian Arbitration & Conciliation Act, 1996, including any amendments thereof. The arbitration tribunal shall be composed of a sole arbitrator, and such arbitrator shall be appointed mutually by the Parties. The place of arbitration shall be Bangalore, India and the arbitration proceedings shall take place in the English language.
20. Additional oral agreements do not exist. All modifications and amendments to this Agreement must be made in writing.
21. The Agreement and/or any rights arising from it cannot be assigned or otherwise transferred either wholly or in part, without the written consent of the other Party.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS CONFIDENTIALITY AGREEMENT IN DUPLICATE BY AFFIXING THE SIGNATURE OF THE AUTHORISED REPRESENTATIVES AS OF THE DATE HEREIN ABOVE MENTIONED.

Disclosing Party	**Receiving Party**
Signature 1	Signature 1
Name	Name
Designations	Designations
Place	Place
Date	Date

WITNESS

ELECTRONIC CONTRACTS (E-CONTRACTS)

Due to the immoderate advancement of technology E-Commerce has become a part of human daily life. E-Commerce is the selling and purchasing of goods and services using technology. E-Contracts are basically the contracts analyzed with E-Commerce and other transactions taking place in the digital environment.

E-contract (contract that is not paper based but rather in electronic form) is any kind of contract formed in the course of e-commerce by the interaction of two or more individuals using electronic means, such as e-mail, the interaction of an individual with an electronic agent, such as a computer program, or the interaction of at least two electronic agents that are programmed to recognize the existence of a contract. Traditional contract principles and remedies also apply to e-contracts. This is also known as electronic contract.

Electronic contracts are born out of the need for speed, convenience and efficiency. For example, a contract that an Indian exporter and an American importer wish to enter into. One option would be that one party first draws up two copies of the contract, signs them and couriers them to the other, who in turn signs both copies and couriers one copy back. The other option is that the two parties meet somewhere and sign the contract. In the electronic age, the whole transaction can be completed in seconds, with both parties simply affixing their digital signatures to an electronic copy of the contract. There is no need for delayed couriers and additional travelling costs in such a scenario.

There was initially an apprehension amongst the legislatures to recognize this modern technology, but now many countries have enacted laws to recognize electronic contracts. In India, Information Technology Act, 2000 governs the law relating to e-contracts substantially. The Act provides for the Attribution, Acknowledgement, Dispatch of Electronic Records, Secure Electronic Records and Secure Digital Signatures which are related to the E-Contracts [Sections: 4, 11, 12, 13, 15].

The contracts formed through electronic media are treated as the general contracts and their formation and acceptance are governed as per the Indian Contract Act, 1872.

The Indian Contract Act, 1872 governs the manner in which contracts are made and executed in India. It governs the way in which the provisions in a contract are implemented and codifies the effect of a breach of contractual provisions. Within the framework of the Act, parties are free to contract on any terms they choose.

Indian Contract Act consists of limiting factors subject to which contract may be entered into, executed and breach enforced.

The conventional law relating to contracts is not sufficient to address all the issues that arise in electronic contracts. The Information Technology Act (IT Act) solves some of the peculiar issues that arise in the formation and authentication of electronic contracts.

The Indian Evidence Act, 1872 deals with the presumption as to e-records. Providing the electronic records as evidence in the disputed matter [Sections: 85A, 85B, 88A, 85C]

ESSENTIALS OF E-CONTRACT

As per the Indian Contract Act, the essentials of a e-contract are:

(i) An offer or proposal by one party and acceptance of that offer by another party resulting in an agreement consensus-ad- idem.

(ii) An intention to create legal relations or intent to have legal consequences.

(iii) The agreement is supported by lawful consideration.

(iv) The parties to contract are legally capable of contracting.

(v) Genuine consent between the parties.

(vi) The object and consideration of the contract is legal and is not opposed to public policy.

(vii) The terms of the contract are certain.

(viii) The agreement is capable of being performed, i.e., it is not impossible of being performed.

Therefore, to form a valid contract there must be

(1) an agreement,

(2) based on the genuine consent of the parties,

(3) supported by consideration,

(4) made for a lawful object, and

(5) between the competent parties.

The bargaining process must satisfy two requirements to result in a valid contract: first, mutual assent as an expression of the parties' intent to contract and second, sufficiently definite terms. In arriving at such mutual assent and definite terms, the parties employ the mechanics of offer and acceptance.

TYPES OF E-CONTRACTS

Generally the basic forms of e-contracts are:

- The Click-wrap or Web-wrap Agreements.
- The Shrink-wrap Agreements.
- The Electronic Data Interchange or (EDI).
- Online Shopping Agreements.

Click-wrap or Web-wrap Agreements

These are the agreements which we generally come across while surfing internet such as "I AGREE" to the terms or "I DISAGREE" to the above conditions. A click-wrap agreement is mostly found as part of the installation process of software packages. It is also called a "click through" agreement or click-wrap license.

Click-wrap agreements can be of the following types:

1. Type and Click where the user must type "I accept" or other specified words in an on-screen box and then click a "Submit" or similar button. This displays acceptance of the terms of the contract. A user cannot proceed to download or view the target information without following these steps.
2. Icon Clicking where the user must click on an "OK" or "I agree" button on a dialog box or pop-up window. A user indicates rejection by clicking "Cancel" or closing the window. Upon rejection, the user can no longer use or purchase the product or service. A click wrap contract is a "take-it-or-leave-it" type of contract that lacks bargaining power.

The Shrink-wrap Agreements

Shrink wrap contracts are license agreements or other terms and conditions which can only be read and accepted by the consumer after opening the product like CD ROM of software. The terms and conditions are printed on the cover of CD ROM. Sometimes additional terms are imposed when in such licenses appear on the screen when the CD is downloaded to the computer. The user has right to return if the new terms and conditions are not to his liking.

Electronic Data Interchange or EDI

These contracts, used in trade transactions which enable the transfer of data from one computer to another in such a way that each transaction in the trading cycle (for example, commencing from the receipt of an order from an overseas buyer, through the preparation and lodgment of export and other official documents, leading eventually to the shipment of the goods), can be processed with virtually no paperwork. Here unlike the other two, there is exchange of information and completion of contracts between two computers and not an individual and a computer.

On-Line Shopping Agreement

Suppose 'X' Ltd. wants to offer online shopping services to its customers. 'X' would tie-up with manufacturers of books, toys, clothes, etc., and offers their products for sale through its website. Some of the products could be stocked in Y's warehouses while others could be stocked with the manufacturers.

Additionally, visitors can post reviews, comments, photos etc on the ‘X’ website. ‘X’ would need to enter into a contract with all its potential customers “before” they place an order for a product using ‘X’ services. This contract must serve the following purposes:

1. Outline the scope of services provided by ‘X’ Ltd.
2. Restrict ‘X’s liabilities in case there is any defect in the products sold through the ‘X’ website.
3. Outline the duties and obligations of the customer.
4. Grant suitable licence to the customer to use the ‘X’ website.
5. Restrict Y’s (Product) liabilities in case of loss or damage suffered by the customer as a direct or indirect result of the ‘X’ website.

IMPORTANT POINTS IN REGARD TO E-CONTRACTS

The important points relating to e-contracts are as under:

1. Customer’s relationship with ‘X’

The contract must specify that by using the ‘X’ website, the customer becomes subject to the terms of a legal agreement between the customer and Y. Customers must be informed that they must be of legal age to enter into the contract.

2. Acceptance of the terms of the contract

The contract must clearly lay down that a customer cannot use the ‘X’ website unless he agrees with the terms of the contract. The customer can usually indicate his acceptance by clicking on an “I Accept” link or checking an “I Accept” checkbox.

3. Copyright

The contract should clearly state that all content included on the ‘X’ website, such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of ‘X’ Ltd.

4. Customers duties and obligations

The contract should clearly lay down the duties and obligations of the customer. Amongst others, the customer must:

- i. Not overload Y’s systems.
- ii. Not download or modify the ‘X’ website.
- iii. Collect and use any product listings, descriptions, or prices.
- iv. Download or copy account information by data gathering and extraction tools.
- v. Not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form).
- vi. Not use any meta tags or any other “hidden text” utilizing Y’s name or trademarks.
- vii. License from Y

5. License from Y

The contract should specify that ‘X’ is giving the customer a limited, revocable, and nonexclusive right to create a hyperlink to the home page of ‘X’ so long as the link does not portray Y, or its products or services in a false, misleading, derogatory, or otherwise offensive matter. The contract must also specify that ‘X’ is giving the customer a personal, worldwide, royalty-free, non-assignable and non-exclusive licence to use the software provided as part of the ‘X’ website. The contract must clarify that this licence is for the sole purpose of enabling the customer to use the ‘X’ website. The contract must forbid the customer from the following acts in respect of the said software:

i. copying,

ii. modifying,

iii. creating a derivative work of,

iv. reverse engineering,

v. decompiling or otherwise attempting to extract the source code. The contract must mention that the customer cannot assign, sub-licence or transfer his rights to use the ‘X’ software.

6. Reviews and comments

The contract should clearly mention that the reviews, comments, photos etc posted by customers should not be illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties.

It should also be mentioned that such content should not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of “spam.” It should also be stated that a customer who posts content grants to ‘X’ Ltd. non-exclusive, royalty-free, perpetual, irrevocable, and fully sub licensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such content throughout the world in any media.

The contract must also state that the customer posting the content indemnifies ‘X’ against all legal action and claims resulting from the said content.

7. Risk of loss

‘X’ has a shipping contract with various courier companies to deliver the products to the customers. The contract should clearly state that once the products are handed over to the courier company, ‘X’s liability ends.

8. Pricing

The contract should clarify how the prices listed on the ‘X’s website are computed. The various options could be:

i. The listed price represents the full retail price listed on the product itself,

ii. The listed price is suggested by the manufacturer or supplier,

iii. The listed price is estimated in accordance with standard industry practice, or

iv. The listed price is estimated in accordance with the estimated retail value for a comparably featured item offered elsewhere.

9. Prohibitions

The contract must specifically prohibit the following:

i. Using “deep-link”, “page-scrape”, “robot”, “spider” etc. to access, acquire, copy or monitor any portion of the service.

ii. Reproducing the navigational structure or presentation of the service.

iii. Circumventing the navigational structure or presentation of the service.

iv. Attempting to gain unauthorized access to any portion or feature of the service.

v. Harvesting or collecting user names, email addresses or other member identification information.

vi. Probing, scanning or testing the vulnerability of the service.

vii. Tracing information relating to other users.

viii. Agreeing not to use any device, software or routine to interfere or attempt to interfere with the proper working of the service or any transaction being conducted on the service, or with any other person's use of the service.

ix. Using the service for any unlawful purpose.

10. Applicable Law

The contract should mention the city / state and country whose law will prevail in this contract. The courts having exclusive jurisdiction over the disputes should also be mentioned. Conditions relating to arbitration of disputes may also be mentioned.

11. Limitation of liability

The contract must clearly mention that 'X' Ltd (and its subsidiaries, affiliates, licensors etc) will not be liable to the customer for:

i. Access delays or interruptions to the 'X' web site.

ii. The loss of registration or processing of an order.

iii. The unauthorized use of the customer's account with Y.

iv. Deletion of, failure to store, or failure to process or act upon email messages sent by customers to 'X' staff.

v. Errors taking place with regard to the processing of the customer's orders.

vi. Any direct, indirect, incidental, special consequential or exemplary damages incurred by the customer pursuant of his use of the 'X' website.

vii. Any loss of profit, any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or services, or other intangible loss incurred by the customer pursuant of his use of the 'X's services.

viii. Any loss or damage incurred by the customer as a result of relationship or transactions with advertisers using the Y website.

ix. Changes in or cessation of the 'X' services.

x. Customer's failure to keep his account information, passwords etc secure and confidential.

12. Exclusion of warranties

The contract must clearly mention that the customer expressly understands and agrees that his use of the services is at his sole risk and that the services are provided "as is" and "as available".

The contract must expressly disclaim all warranties and conditions of any kind (express and implied). It must also be mentioned clearly that 'X' (its subsidiaries, affiliates, licensors etc.) do not represent or warrant that:

i. the 'X' services will meet the customer's requirements,

ii. the ‘X’ services will be uninterrupted, timely, secure or free from error,

iii. the information provided by or through the ‘X’ services will be accurate or reliable, and

iv. that defects in the operation or functionality of the Y services will be corrected.

13. Ending the relationship between ‘X’ and the customer

The contract must lay down that the customer can terminate the contract by closing his accounts with Y. ‘X’ must retain the right to terminate the contract under the following circumstances:

i. The customer breaches any provision of the contract.

ii. The customer acts in a manner that clearly shows his intention to breach a provision of the contract.

iii. ‘X’ is required by law to terminate the contract.

iv. The provision of the services to the customer is no longer commercially viable.

LESSON ROUND-UP

- Commercial contracts outline transaction details, payment terms, goods or services exchanged, date, and price. However, it’s important to note that each commercial contract is different and contains varied elements. They specify the parties, the deliverables, a clear plan for what will happen if the parties don’t fulfill their responsibilities, and the applicable law.
- Limited Liability Partnership is governed by Limited Liability Partnership Act-2008. LLP Agreement is a written contract between the partners of the LLP or between the LLP and its designated partners. It establishes the rights and a duty of the designated partners toward each other as well toward the LLP. Well-structured detailed LLP Agreement set the groundwork and act as a backbone to strengthen the firm. It is the guide that gives directions to the LLP registration.
- A collaboration between a resident and non-resident nation is known as a “foreign collaboration.” It is a partnership or union between a domestic and international business. It takes the shape of a contract that both parties have signed for their mutual benefit. Forming a foreign partnership requires the association of one non-resident entity.
- A Joint Venture is a strategic partnership when two or more people or businesses concur to contribute capital, goods, or services to a single commercial enterprise. Compatibility between the parties to the contract is essential for any joint venture to be successful in India. The associated parties should have a distinct objective, and conditions should be spelled out in the JV (Joint Venture) agreement provisions.
- A Joint Development Agreement is a contract between a real estate developer and the landowner to build projects on the latter’s land. As per the contract, the landowner provides the land, and the developer manages the construction side of the project.
- Service Agreement is an agreement between a business providing services and its customer or client. A clear demarcation of the services to be offered by either party along with their expertise, saves the time of the parties and reduces the chances of dispute due to the agreed set of terms and conditions in the Agreement.

- Dealership Agreement means an oral or written agreement, either express or implied, between a supplier and a dealer which provides that the dealer is granted the right to sell, distribute, or service the supplier's equipment, regardless of whether the equipment carries a trade name, trademark, service mark, logotype, advertisement, or other commercial symbol, and which provides evidence of a continuing commercial relationship between the supplier and the dealer.
- A distribution agreement is a legally binding agreement between a supplier and a distributor of products. The distribution agreement governs the distribution of items made by a producer and sold by a distributor. The details of the agreement are defined in the distribution contract, which includes the cost of the items or the commission rate, the length of the contract, the distributor's operating area, and other data.
- A franchise agreement is a legally enforceable contract between a franchisor and a franchisee. These agreements authorise a franchisee to open a franchise site while also granting the ability to use franchise-specific resources such as branding, business methods, and supplier sources. A franchise agreement, like any other contract, is intended to define precise conditions for the parties' relationship.
- An outsourcing contract is an agreement made between the company and the outsourcing service provider, placed over a legal document that states what work will be handled to the outsourcing service provider. Typically, an outsourcing agreement includes provisions such as pricing and payment, transfer of assets, information security, intellectual property matters, monitoring provisions, termination, service level etc.
- A non-disclosure agreement is a legally enforceable contract that creates a confidential connection between two parties. The signatory party or the parties to the agreement agree that any sensitive information they collect will not be shared with anyone else. A confidentiality agreement is another name for a non-disclosure agreement.
- Globalization and diffusion of technology has accelerated the presence of e-commerce companies throughout the world. E-Contract is an agreement that is enforceable under the law and is in all respects drafted, negotiated, and executed digitally.

GLOSSARY

Collaboration: Collaboration is a working practice whereby individuals work together for a common purpose to achieve business benefit.

E-contracts: Electronic contracts are the contracts which take place through e-commerce, without meeting of the parties to the contract.

Franchise: The right or license granted to an individual or group to market a company's goods or services in a particular territory.

Joint Venture: A joint venture (JV) is a business arrangement in which two or more parties agree to pool their resources for the purpose of accomplishing a specific task.

Outsourcing: Outsourcing is a business practice in which a company hires a third party to perform tasks, handle operations or provide services for the company.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. All commercial contracts have standard basic principles of drafting. Comment.
2. What are the Important Clauses one should keep in mind while drafting Commercial Contracts?
3. Discuss the guidelines for entering into foreign collaboration agreements.
4. What is a service agreement? What are the contents of Service Agreement?
5. Differentiate between a distribution agreement, Franchise Agreement and a dealer agreement.
6. Define electronic contracts. What are different types of e-contracts? Elaborate.
7. Draft a specimen of non-disclosure agreement.

LIST OF FURTHER READINGS

- Chartered Secretary, The ICSI
- Articles written by professionals

OTHER REFERENCES (Including Websites / Video Links)

- https://www.icsi.edu/home/cs/

Documents under Companies Act, 2013

Lesson 6

KEY CONCEPTS

■ Deed of Amalgamation ■ Agreements of Mortgages ■ Redemption or re-conveyance Deed ■ Debenture Trust Deed ■ Under writing Agreements ■ Drafting of Resolutions

Learning Objectives

To understand:

- ➢ The drafting of documents in Amalgamations of companies
- ➢ Agreements for various type of Mortgages
- ➢ Debenture Trust Deed
- ➢ Shareholders'& Share Purchase Agreements
- ➢ Drafting of Brokerage and underwriting agreements
- ➢ Drafting of Resolution for important matters

Lesson Outline

- ➢ Deed of Transfer of Undertakings
- ➢ Mortgage Deed
- ➢ Debenture Trust Deed
- ➢ Share Purchase Agreement
- ➢ Share holder Agreement
- ➢ Underwriting & Brokerage Agreement
- ➢ Resolutions
    - ✓ Appointment of KMPs,
    - ✓ Adoption of Financial Statements,
    - ✓ Distribution of Dividend,
    - ✓ Corporate Social Responsibility,
    - ✓ Inter- corporate Loans,
    - ✓ Borrowings and Investment by Company,
    - ✓ Approval of Related Party Transactions
- ➢ Lesson Round-Up
- ➢ Glossary
- ➢ Test Yourself
- ➢ List of Further Readings
- ➢ Other References (including websites / video link

REGULATORY FRAMEWORK

- The Companies Act, 2013
- Transfer of Property Act, 1882
- Arbitration and Conciliation Act, 1996

TRANSFER OF UNDERTAKINGS: AMALGAMATION

Amalgamation means merging of two corporations, destroying both in the process and creating an entirely new entity i.e. a new financial organization. This emergence allows the newly formed company to inherit the assets and liabilities of its constituent parties to incorporate within as a sort of successor to both of them being bigger and better than both as well.

The amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings.

There may be amalgamation either by:

(i) the transfer of two or more undertakings to a new company, or

(ii) the transfer of one or more undertakings to an existing company.

CASE LAWS

In the matter of *Speed line Agencies Vs. T Stanes & Co. Ltd- Supreme Court decided that,* with effect from the effective date, all proceedings in which Transferor Company was a party be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued, prosecuted and enforced by or against the Transferor Company as if the Scheme had not been made.

In other words, when a transferor company stands dissolved (with or without winding up) due to amalgamation, its right under the decree for eviction devolves on the transferee company.

Sections 230 to 240 of the Companies Act, 2013 provide various methods of company re-organisation or reconstruction. The various terms used for reorganisation are arrangement, reconstruction, amalgamation, merger, take-over, etc. They are distinct terms but they have many common features and to a great extent they overlap. The expression "arrangement" is of wider import and include reconstruction and amalgamation.

"Arrangement" has been defined in explanation to section 230(1) of the Companies Act, 2013 as including a reorganisation of the company's share capital by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both those methods.

"Arrangement" has a wider interpretation and includes reconstructions and amalgamations.

"Reconstruction" has not been defined in the Companies Act. A reconstruction normally entails the transfer of an undertaking to another company, consisting substantially of the same shareholders with a view to its being continued by the transferee company, and usually resorted to for achieving one or more of the following objects:

(a) For the purpose of raising fresh capital by issuing partly paid shares in the new company in exchange for fully shares in the old company, and calling up the balance on new shares as and when required;

(b) For extending the company's objects;

(c) For reorganising or rearranging the capital structure and the rights of members as between themselves; and

(d) For effecting a compromise with creditors, or the allotment to them of shares or debentures in settlement of their claims.

A reconstruction may, however, take place, without the promotion and incorporation of new company, by compromise with members involving alterations of various rights between each class, usually also involving the writing down of the amount of share capital (as in a reduction of capital, which is a special form of reconstruction) and by a compromise with creditors (including debenture holders).

Amalgamation usually covers a situation where two or more companies join forces either under the name of one of them or in a new company formed for the purpose. This is a blending of two or more existing undertakings into one, the shareholders of each company becoming substantially the shareholders in the company which is to carry on the blended undertakings.

Deed of Amalgamation & Transfer of Undertakings of Companies

Specimen agreement for Amalgamation & Transfer of Undertakings between two companies

THIS DEED is executed made on this ______ day of ____________________(Month), ____________(Year) at ____________________(Place)

BETWEEN

ABS NGA COMPANY LIMITED, a public company with limited liability incorporated under the Companies Act, 2013,with corporate identity number: ____________________________ and having its registered office at _________________________________ (hereinafter referred to as the "Transferor Company", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and permitted assigns);

AND

MST SERVICES LIMITED, a company incorporated under the provisions of the Companies Act, 2013 with corporate identification number: ____________________________________ and having its registered office at ____ (hereinafter referred to as the "Transferee Company", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and substitutes from time to time).

The parties mentioned above are hereinafter collectively referred to as the "Parties" and individually as a "Party".

Whereas:

a. This Scheme of Arrangement ("the Scheme") provides for amalgamation of __________________ (Name of Transferor Company) with _____________________ (Name of the Transferee Company).

b. Transferor Company was incorporated as a Private Company limited by shares under the provisions of the Companies Act, 2013 having CIN No _________________________. The Registered Office of Transferor Company is situated at____. The Transferor Company is engaged in the business of ____.

c. Transferee Company was incorporated as a Private Company limited by shares under the provisions of the Companies Act, 2013 having CIN No_________________. The Registered Office of Transferee Company is situated at ____. The Transferee Company carries on business of____.

d. It is proposed to amalgamate Transferor Company with Transferee Company pursuant to a Scheme under Section 230 to 232 read with applicable Rules of Companies (Compromises, Arrangements and Amalgamations), Rules 2016 and other relevant provisions of the Act.

e. This Scheme envisages vertical integration of Companies engaged in similar business profile resulting into consolidation of businesses, simplification of structure (including shareholding structure) thereby strengthening the financial position of Transferee Company and its operational optimisation.

f. The other benefits likely to arise through the proposed arrangement are as follows:

    i. enable the Transferee Company to consolidate its business operations and provide significant impetus to its growth;

    ii. result in reduction in overheads, administrative, managerial and other expenditures and will enhance operational efficiency and optimal utilization of various resources;

    iii. be conducive to better and more efficient and economical control and conduct of the business;

    iv. enable elimination of duplication of administrative functions and the multiple records keeping resulting in reduced expenditure;

    v. result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and Transferee Company;

    vi. Obtaining synergy benefits.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. The Scheme, set out herein in its present form or with any modification(s) approved, shall be effective from the latest date on which certified copies of the NCLT order under section 230 to 232 of the Companies Act, 2013 is filed with the Registrar of Companies (RoC). Such date is called as the Effective Date.

2. Though this Scheme shall become effective from the Effective Date, the provisions of this Scheme shall be applicable and come into operation from the Appointed Date.

3. Subject to the provisions of this Scheme as specified hereinafter and with effect from the Appointed Date, whole of the Undertaking of the Transferor Companies including but not limited to all the movable and immovable properties and assets (whether tangible or intangible) of the Transferor Companies comprising, amongst others, all furniture and fixtures, investments, software's, computers/ data processing, office equipment, electrical installations, telephones, telex, facsimile and other communication facilities, deposits, reserves, provisions, advances, receivables, funds, cash, bank balances and business licenses, permits, authorizations, approvals, lease, tenancy rights, permissions, incentives, if any, and all other rights, patents, know-how, trademark, service mark, trade secret or other intellectual property rights, proprietary right, title, interest, contracts, consent, approvals and rights and powers of every kind, nature and description whatsoever, privileges, liberties, easements, advantages, benefits and approvals, if any, existing as on Appointed Date, shall, under the provisions of Sections 230 to 232 of the Act, and pursuant to the confirmation order of the Hon'ble National Company Law Tribunal (NCLT) sanctioning this Scheme and without further act, instrument or deed, but subject to the charges effecting the same as on the Effective Date, be transferred and/or deemed to be transferred to and vested in the Transferee Company so as to become the properties, assets, rights of the Transferee Company.

4. From the aforesaid date of the purchase. the Transferee company shall be liable for all the debts and liabilities of the Transferor Company and shall be liable to perform all its engagements. The Transferor Company shall be indemnified by the company against all claims and demands. The company shall

defend all actions and proceedings against the vendor who shall also be indemnified in respect of such actions and proceedings.

5. Without prejudice to the above provisions, with effect from the Appointed Date, all inter-party transactions between the Transferor Companies and the Transferee Company, if any, shall be considered as intra-party transactions for all purposes.

6. The Transferee Company shall pay to the Transferor Company Rs ________________ as consideration for the aforesaid purchase and out of the aforesaid consideration Rs ________________ shall be paid through bank transfer/cheque and the balance of Rs __________________ shall be paid to the vendor by allotment of __________________ Equity Shares of Rs _____ each in the capital of the company credited as fully paid-up shares.

7. The company shall create and issue __________ Equity Share of Rs _____ each to increase its shares capital as aforesaid and for the same purpose the company shall pass a resolution in accordance with the Articles of Association of the company and in accordance with the provisions of the Companies Act, 2013.

8. For the purpose of Stamp Duty, the value of the immoveable properties of the Transferor Company shall be fixed for Rs ______________ and the goodwill benefits of contracts and securities, debts, stock, fittings and fixture and all other properties of the Transferor Company shall be valued at Rs _______________.

9. With effect from the Appointed Date and up to the Effective Date, the Transferor Companies shall be deemed to have held and stood possessed of and shall hold and stand possessed of all its properties and assets for and on account of and in trust for the Transferee Company. The Transferor Companies hereby undertakes to hold their said assets with utmost prudence until the Effective Date.

10. Thereupon, the purchase shall be deemed to have been completed and the Transferor Company shall execute necessary documents and do all things and give assurance as may be necessary and reasonable for the vesting of all the properties, the subject matter of the aforesaid purchase by the company.

IN WITNESS WHEREOF the parties herein under have set their hands on the day and year hereinabove mentioned.

______________________________	______________________________
First Party	Second Party
______________________________	______________________________
Witness 1	Witness 2

MORTGAGE DEEDS FOR COMPANIES

What is a Mortgage?

A mortgage meaning in simple words is a transaction between two people: a borrower and the lender. Section 58 of the Transfer of Property Act, 1882 defines Mortgage as the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

Types of Mortgage

(a) Simple mortgage.– In a simple mortgage, the mortgagor without delivering possession of the mortgaged property binds himself personally to pay the mortgage money and agrees expressly or impliedly that if he fails to pay the debt and interest in terms of the mortgage deed, the property may be sold and the proceeds applied in payment of the mortgaged money.

Characteristics of a simple Mortgage:

It has following characteristics:-

i. That the mortgagor must have bound himself personally to repay the loan.

ii. That to secure the loan he has transferred to the mortgagee the right to have the specific immovable property sold in the event of his having failed to repay.

iii. That the possession of the property is not delivered to the lender.

iv. In a simple mortgage, the security for the debt is two-fold:

  (a) the personal obligation; and

  (b) The property.

CASE LAWS

In *Ram Narayan Singh v. AdhindraNath*, *AIR (1916) PC 119* the Court held that the fact that some immovable property has been mentioned as security for its repayment does not displace the personal liability of mortgagor to repay the loan with interest.

Deeds of Simple Mortgage

THIS DEED OF MORTGAGE is executed made on this ______ day of ______________________(Month), ______________(Year) at ______________________(Place)

BETWEEN

ABS NGA COMPANY LIMITED, a public company with limited liability incorporated under the Companies Act, 2013,with corporate identity number: ________________________________ and having its registered office at _____________________________________ (hereinafter referred to as the "Mortgagor", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and permitted assigns);

AND

MST SERVICES LIMITED, a company incorporated under the provisions of the Companies Act, 2013 with corporate identification number: ____ and having its registered office at ________ ____ (hereinafter referred to as the "Mortgagee", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and substitutes from time to time).

The parties mentioned above are hereinafter collectively referred to as the "Parties" and individually as a "Party".

WHEREAS the Mortgagor is absolutely seized and possessed of or otherwise is well and sufficiently entitled the property intended to be hereby mortgaged which is free from all encumbrances and attachments.

AND WHEREAS the Mortgagee has agreed to lend and advance a sum of Rs ________________ to the Mortgagor at his request upon having the repayment thereof, with interest at the rate hereunder stated and secured in the manner hereinafter expressed.

NOW THIS DEED WITNESSES, that in pursuance of the said agreement and in consideration of the sum of Rs. _______________ paid to the Mortgagor by the Mortgagee simultaneously with the execution of these presents the receipt whereof the Mortgagor do hereby admit, acknowledge and confirm, the Mortgagor do hereby agree with the Mortgagee that the Mortgagor will on or before the _____ day of_________________ 20_____, pay or cause to be paid to the Mortgagee the sum of Rs _____________ with interest for the same in the meantime at the rate of ______ per cent, per annum, such interest to be paid monthly and every month on the 10th of each following month without any delay or default.

AND THIS DEED FURTHER WITNESSETH AS FOLLOWS:

(1) That the mortgagor is the sole owner of the property mortgaged and is in absolute possession, occupation and enjoyment of the property described in schedule hereunder, and no one else has got any right, title, power and interest in the property hereby mortgaged.

(2) That the mortgagor is in need of funds and has therefore approached the Mortgagee and the Mortgagee has agreed to lend the same on the surety of the property described in schedule hereunder.

(3) that the mortgagor undertakes to repay the loan amount together with interest thereon at the rate and within the period abovementioned.

(4) In consideration aforesaid, the mortgagor do hereby transfer by way of mortgage his house bearing municipal no ______ situated at _______________________________________ and more particularly described in the Schedule hereunder written as a security for repayment of the said sum with interest @ ________ per annum with the condition that the mortgagor, his heirs, executors, administrators or assigns shall on the said the pay to the mortgagee, his heirs, executors, administrators or assigns the said sum of Rs ______________ together with interest thereon at the rate mentioned above, the said mortgagee, his heirs, executors, administrators, or assigns shall at any time thereafter upon the request and at the cost of the mortgagor, his heirs, executors, administrators or assigns re-convey the said house, hereinbefore expressed to be mortgaged unto or to the use of the mortgagor, his heirs, executors, administrators or assigns or as he or they shall direct.

(5) that on default in the aforesaid repayment of the loan amount and interest thereon the Mortgagee shall be free to enforce against the property described in schedule hereunder, without intervention of the Court, under Section 69 of the Transfer of Property Act after giving notice to the mortgagor to sell the Mortgaged property.

(6) that the amount mentioned above have been fully lent by the Mortgagee and the Mortgagor acknowledges the receipt of the amount.

(7) that the mortgagor hereby mortgages by way of Simple Mortgage with the mortgagee, the property described in schedule hereunder together with all rights, title and interest of the Mortgagor in and upon the said property and part thereof to have and to hold the property unto the Mortgagee.

(8) That the mortgagor shall bear stamp duty, registration charges and other out-of-pocket expenses for the execution and registration of this deed and re-conveyance deed.

(9) Any other Terms and Conditions (if any):

IN WITNESS WHEREOF the parties herein under have set their hands on the day and year hereinabove mentioned.

________________________________ ________________________________

First Party Second Party

________________________________ ________________________________

Witness 1 Witness 2

Schedule – Description of the Property

(b) Mortgage by conditional sale.—Where the mortgagor ostensibly sells the mortgaged property on condition that on default of payment of the mortgage-money on a certain date, the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.

Characteristics of Mortgage by Conditional Sale:

i. There is an ostensible (appearing to be true but not necessarily so) sale of immovable property.

ii. It is a conditional sale. The sale is subject to any of the following conditions:

   (a) On non-payment of mortgage-money (price) the sale would become absolute or,

   (b) On payment of mortgage money the sale shall become void or the buyer shall re-transfer the said property to the seller.

iii. The condition must be embodied in the same document.

CASE LAW

In *Rama v Samiyappa ILR (1881) 4 Mad 179 183 184* case, the High Court held that the essential of this form of mortgage is that with the default of payment the transaction is closed and the mortgage security becomes the absolute property of the mortgagee. There is no personal liability on the part of the mortgagor to repay the debt. The mortgagor's right of redemption will be lost only by a decree for foreclosure.

Deed of Mortgage by Conditional Sale

THIS DEED OF MORTGAGE is executed made on this ______ day of ______________________(Month), ______________(Year) at ______________________(Place).

BETWEEN

ABS NGA COMPANY LIMITED, a public company with limited liability incorporated under the Companies Act, 2013,with corporate identity number: ________________________________ and having its registered office at ____________________________________ (hereinafter referred to as the "Mortgagor", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and permitted assigns).

AND

MST SERVICES LIMITED, a company incorporated under the provisions of the Companies Act, 2013 with corporate identification number: ____ and having its registered office at ________ ____ (hereinafter referred to as the "Mortgagee", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and substitutes from time to time).

The parties mentioned above are hereinafter collectively referred to as the "Parties" and individually as a "Party".

Whereas:

1. The Mortgagor being owner and completely seized of plot of land located at ______________________ ____________________.

2. The Mortgagor has been doing the business of ______________________________ and wants to borrow a sum of Rs.__________ (Rupees ____________________________) from Mortgagee for doing his business, which Mortgagee has consented in lending the said sum with interest @ ______ % annually on condition that the repayment of the said sum with interest shall be secured by the mortgage of the property.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. In consideration of the sum of Rs. ____________ borrowed by the Mortgagor from the Mortgagee (which receipt the Mortgagor hereby acknowledges) the Mortgagor hereby agrees with the Mortgagee that Mortgagor will pay to the Mortgagee the said sum of Rs. ____________ in _____ half–yearly/quarterly/monthly instalments, the first instalment falling due on _____ the day of ___________, _______ with an interest @ _____ % from date of this deed till time the said sum is fully repaid (hereinafter called "the mortgage money").
2. That per security for above stated loan, the Mortgagor transfers and delivers physical vacant possession to Mortgagee of whole property stated in the schedule annexed hereto (after it designated "the mortgaged property") per condition, on defaulting paying the mortgage money on a certain date, the transfer so made shall be a complete sale, or payment if made by the Mortgagor the sale become nullity and Mortgagee shall re-convey the mortgaged property to the Mortgagor free from all encumbrances.
3. The Mortgagor also agrees with the Mortgagee that he is the complete owner of the mortgaged property and property is free from all encumbrances or charge.
4. If Mortgagor default payment of sum due under this deed with interest, the Mortgagee shall have a right to foreclose the Mortgagor's equity of redemption.
5. The Parties hereto consent that cost of registration of this deed with stamp duty and other misc. expenses shall be borne by the Mortgagor.

IN WITNESS WHEREOF the parties herein under have set their hands on the day and year hereinabove mentioned.

_________________________ _________________________

First Party Second Party

_________________________ _________________________

Witness 1 Witness 2

Schedule – Description of the Property

(c) Usufructuary mortgage.—Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

Characteristics of Usufructuary Mortgage:

i. Delivery of possession of the mortgage-property or, an express or implied undertaking by the mortgagor to deliver such possession.

ii. Enjoyment or use of the property by mortgagee until his dues are paid off.

iii. There is a transfer to the mortgagee of one of the incidents of ownership, namely, the right of possession and enjoyment of the usufruct.

iv. No personal liability of the mortgagor.

v. The mortgagee cannot foreclose or sue for sale of mortgage-property.

vi. In this form of mortgage, no time-limit is fixed for the payment.

CASE LAWS

Harminder Singh (D) THR. LRS. Appellant(S) Vs. Surjit Kaur(D) THR. LRS. & Ors. Respondent(S), Supreme Court of India, dated 27th April, 2022

Fact of the Case

The plaintiff is in appeal before this Court against the Judgment and decree passed by the High Court in Second Appeal on 21.12.2007 whereby the mortgagor's appeal was allowed holding that the mortgagor has a right to redeem the land in question.

Gulab Singh – mortgaged his share of land in favour of Rajinder Singh on 02.05.1921 with possession. The defendants inherited the estate of Gulab Singh whereas Rajinder Singh - mortgagee died issueless and his rights were inherited by his wife – Rajinder Kaur. Rajinder Kaur sold her mortgagee rights to the plaintiff vide sale deed dated 18.06.1979.

Since the mortgage was not redeemed by the mortgagor within a period of 30 years, the plaintiff filed a suit for declaration that she had become the owner after the extinguishment of the mortgage rights and for permanent injunction.

Decision

The Court held that once a usufructuary mortgage is created, the mortgagor has a right to redeem the mortgage at any point of time on the principle that once a mortgage always a mortgage.

Such judgment was affirmed by Supreme Court in '*Singh Ram (Dead) Through Legal Representatives Vs. Sheo Ram & Ors.'* In view of the aforesaid judgment, we do not find any merit in the present appeal and the same is dismissed.

Deed of Usufructuary Mortgage

THIS DEED OF MORTGAGE is executed made on this ______ day of ______________________(Month), ______________(Year) at ______________________(Place)

BETWEEN

ABS NGA COMPANY LIMITED, a public company with limited liability incorporated under the Companies Act, 2013, with corporate identity number: ________________________________ and having its registered office at ____________________________________ (hereinafter referred to as the "Mortgagor", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and permitted assigns).

AND

MST SERVICES LIMITED, a company incorporated under the provisions of the Companies Act, 2013 with corporate identification number: ____ and having its registered office at ________ ____ (hereinafter referred to as the "Mortgagee", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and substitutes from time to time).

The parties mentioned above are hereinafter collectively referred to as the "Parties" and individually as a "Party".

Whereas:

1. The Mortgagor being owner of and completely seized of a plot of land located at ___________________ (more specifically stated in the schedule hereof).
2. The Mortgagor wants to borrow a sum of Rs.______________(Rupees _______________________________) from the Mortgagee for doing his business and the Mortgagee has consented to grant him the loan of Rs. ___________________ at interest @ ____ % annually and on mortgage of the said property as a security for the payment of the said loan.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. That in consideration of the sum of Rs._______________ borrowed by the Mortgagor from the Mortgagee (which receipt is acknowledged by Mortgagor), the Mortgagor hereby agrees that the Mortgagee shall retain possession of the mortgaged property until the principal sum together with the interest due be paid off out of the proceeds of the property and on payment of the aforesaid sum, the Mortgagee shall execute and register a release of the mortgaged property in favour of the Mortgagor.
2. That the Mortgagee also shall not to, execute, perform nor suffer to the contrary any act deed or thing whereby or by reason or means whereof the value of the said property in his possession may be diminished or the same may otherwise be prejudiced in title or estate.
3. That the Mortgagor does also agree to pay the Government revenue and the municipal tax of the said property regularly and in case he fails to make such payment, the Mortgagee shall be at liberty to pay such revenue and taxes, and such sum paid shall be considered an additional principal sum advanced to the Mortgagor, and shall carry interest at the rate stipulated above.
4. That the Mortgagor also agrees that if he, the Mortgagor, does not pay the principal sum with the interest then due on the stipulated date, this conveyance will become absolute and the Mortgagee will be entitled to foreclose the mortgaged property, and thereafter the Mortgagor, his heirs, executors, administrators or assigns shall be absolutely debarred of all the rights to redeem the same.

IN WITNESS WHEREOF the parties herein under have set their hands on the date and year hereinabove mentioned in the presence of:

________________________________ ________________________________

First Party Second Party

________________________________ ________________________________

Witness 1 Witness 2

Schedule – Description of the Property

(d) English mortgage.—In an English mortgage, a mortgagor binds himself to repay the mortgaged money on certain date and transfers the mortgaged property absolutely to the mortgagee subject to the proviso that he will re-transfer it to the mortgagor upon payment of the mortgaged money as agreed. In this mortgage the borrower promises to repay the borrowed money on a certain date. The borrower transfers the property to the lender. The lender will re-transfer the property when the money is repaid. The mortgaged property is absolutely transferred to the mortgagee.

Characteristics of English Mortgage:

- The mortgagor binds himself to repay the mortgage money (debt) on a certain date.

- The mortgage-property is transferred absolutely to the mortgagee.
- The absolute transfer is subject to a proviso that mortgagee will re-transfer the property to mortgagor on payment of mortgage-money on the said date.
- It is known to mortgagee with certainty when the mortgagor is to redeem or he to proceed to foreclose or sell.

CASE LAW

In *Narayana v. Venkataramana, ILR (1902) 25 Madras 220 (235) (FB)* case the court opined that the English Mortgage has three essential ingredients. First, the mortgagor has to bind himself to repay the mortgage money on a certain day. Secondly, the property mortgaged is transferred "absolutely" to the mortgagee. Thirdly, this transfer is subject to a proviso that the mortgagee will reconvey the property to the mortgagor upon payment of the mortgage – money on the date fixed for repayment.

The statutory power of sale by an English mortgagee arises when the mortgagor and the mortgagee are not Hindus, Muhammadans or Buddhists or members of any other race, sect, tribe or class from time to time specified in this behalf by the State Government in the Official Gazette. This means that majority of people in India, though entitled to go in for English mortgage, cannot have the statutory power of sale due to confinement of this power only to certain communities such as Christians, people of English origin only.

Deed of English Mortgage

THIS DEED OF MORTGAGE is executed made on this ______ day of ______________________(Month), ______________(Year) at ______________________(Place)

BETWEEN

ABS NGA COMPANY LIMITED, a public company with limited liability incorporated under the Companies Act, 2013, with corporate identity number: ________________________________ and having its registered office at ____________________________________ (hereinafter referred to as the "Mortgagor", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and permitted assigns);

AND

MST SERVICES LIMITED, a company incorporated under the provisions of the Companies Act, 2013 with corporate identification number: ____ and having its registered office at ________ ____ (hereinafter referred to as the "Mortgagee", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and substitutes from time to time).

The parties mentioned above are hereinafter collectively referred to as the "Parties" and individually as a "Party".

Whereas:

1. The Mortgagor being owner and completely seized of the plot of land located at _______________.
2. The Mortgagor is doing the business of ____ and wants to borrow a sum of Rs.____________ (Rupees _________________________________) from the Mortgagee for doing his business and the Mortgagee has consented to lend the said sum on interest @ ______ % annually on the condition that the repaying the said sum with interest shall be secured by the mortgage of the property.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. That in consideration of the sum of Rs ________________________ this day paid to the said 'Mortgagor' by the said 'Mortgagee' (the receipt whereof the said 'Mortgagor' hereby acknowledges), the =-Mortgagor hereby agrees with the covenant to pay to the Mortgagee on the ________________________ day of ___________________ the sum of Rs _______________ with interest thereon in the meantime at the rate of Rs _______________ per cent per annum computed from the date of this deed such interest to be paid monthly and every month on the 15th of every current month.
2. That as a security for the aforesaid loan, the Mortgagor hereby transfers, to the Mortgagee all that property stated in the schedule annexed hereto (hereinafter called "the mortgaged property") and To Hold the same to the Mortgagee completely.
3. That on paying of the mortgage money with interest on the day and in the manner hereinbefore stated the Mortgagee shall re-transfer the mortgaged property to the Mortgagor and shall also handover to the Mortgagor, this Mortgage deed and other documents concerning the mortgaged property which are in the possession of the Mortgagee per this Mortgage deed.
4. The Mortgagor also agrees with the Mortgagee that he is the complete owner of the mortgaged property and the mortgaged property is free from all encumbrances or charge.
5. That the Mortgagor do hereby covenant unto the Mortgagee that the Mortgagor has absolute title to the land and premises hereby granted and conveyed and that the Mortgagor has good right, full power, absolute authority and indefeasible title to grant, convey, transfer, assign and assure the same unto and to the use of the Mortgagee in the manner hereinbefore indicated and further the Mortgagor and all persons having lawfully or equitably any estate or interest in the same shall at all time hereafter during the continuance of the security do execute or perform or cause to be done, executed and performed all such further or other acts, deeds and things as may be reasonably required for further and more perfectly assuring the same unto and in favour of the Mortgagee.

   Provided, however, and it is further agreed by and between the parties that if the Mortgagor commits any default in payment of the principal amount on the due date or any three instalments of interest, whether they have been demanded or not it shall be lawful for the Mortgagee to institute a suit for sale and to have a Receiver appointed over the mortgaged property.
6. The Parties hereto consent that the cost of registration of this deed with stamp duty and other misc. expenses shall be borne by the Mortgagor.

IN WITNESS WHEREOF the parties herein under have set their hands on the date and year hereinabove mentioned in the presence of:

________________________________ ________________________________

First Party Second Party

________________________________ ________________________________

Witness 1 Witness 2

Schedule – Description of the Property

(e) Mortgage by deposit of title-deeds — Mortgage by deposit of title deeds is called in English law as equitable mortgage. It is an oral transaction and no documents like Deed of Mortgage is required to be executed. No written acknowledgement is required for creating this mortgage. It is however, prudent to have a record of transaction to avoid difficulties to establish the creation of the mortgage. In this case, a Memorandum of Mortgage by deposit of title deeds is prepared by the mortgagee to secure the specific mortgage money. The main characteristics of this type of mortgage are as under:

1. Debt even time barred, present and future advances are covered under the equitable mortgage. In other types of mortgage, future advances are not covered.

2. Delivery of title deeds is required to be made in Mumbai, Chennai and Kolkata and other specified towns to which the facility is extended by State Government from time to time through Gazette notification.

   It is not necessary for creation of mortgage that the property be located in the specified town or the company making deposit should have its registered office in that town.

3. This deposit can be made by the company through its nominee or agent duly authorised.

4. Intent to create security by deposit of title deeds should be present at the time of such deposit in the mortgagor.

5. Neither ownership nor possession of the property passes to the mortgagee under the equitable mortgage.

Equitable mortgage is preferred by the lenders/banks/creditors as well as the commercial enterprises because of the inherent advantages viz.

(a) to save time and avoid inconvenience of documentation, and registration;

(b) to minimise cost of creating mortgage and cost of borrowed funds by saving stamp duty;

(c) to maintain secrecy of the debt transaction;

(d) section 180 of the Companies Act, 2013.

CASE LAW

In *K.J. Nathan, S. Maruthi, AIR (1965) SC 430* case, the physical delivery of the title-deeds had taken place outside the towns specified. But the intention to create equitable mortgage by these deeds was formed after delivery of the deeds and in a town which was within the notified area. The Supreme Court held that an equitable mortgage was created under section 58 (f) of the Transfer of Property Act. The Court opined that there must be a bona fide intention that possession of title-deeds with the creditor is by way of security for the money advanced by him. However, the intention to create security by the deposit of title-deeds is a question of fact and not of law.

Deed of deposit of title deeds

THIS DEED is executed this _______ day of __________ 20..................

BY

ABS NGA COMPANY LIMITED, a public company with limited liability incorporated under the Companies Act, 2013, with corporate identity number: ______________________________ and having its registered office at __________________________________ (hereinafter referred to as the "Mortgagor", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and permitted assigns).

IN FAVOUR OF ______________________ Bank, a Banking Company registered under the Indian Companies Act having its registered office at ___________________________________and Branch office among other places at _________________________________ hereinafter called/referred as the MORTGAGEE (which expression shall unless repugnant to the meaning or context thereof shall include its successors and assings) in respect of the property mentioned hereunder in the Schedule to create a security for the Loan borrowed by M/s ______________________ on ____.

The Mortgagor/ s have on ____________ deposited the following documents of title deeds relating to their properties listed hereunder with the Mortgagee at their ______________________________ Branch with an intent to create an EQUITABLE MORTGAGE in favour of the Mortgagee over the property/ ies to which document relate to them described hereunder for the purpose of securing repayment to the Mortgagee of all the amounts owing to the Mortgagee under advances made and to be made by the Mortgagee to M/s ____________________________ or to any one of us or to any concern, in which I am/ we are the owner(s) / partner(s)/ proprietor by way of loan of Rs.______________ (Rupees ________________________) and above together with interests and other charges thereon.

The Mortgagor/ s further declare that the documents deposited as __________________________ are all were in his/ her/ their possession and control and that the property/ ies is/ are not charged or encumbered in anyway whatsoever.

IN WITNESS WHEREOF the mortgagors have subscribed their signatures at _____________ on the day, month and year first above mentioned.

WITNESSES : MORTGAGOR/ S

1.

2.

(f) Anomalous mortgage.—A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.

CASE LAW

In *Madho Rao v Gulam Mohiuddin AIR 1919 PC 121* case, the Court held that while considering an anomalous mortgage, the intention of the parties must be gathered from the terms of the instrument as controlled by the provisions of the Act.

Deed of redemption or re-conveyance of mortgage property by the mortgagee in favour of the mortgagor.

THIS DEED OF MORTGAGE is executed made on this _____ day of ____________________(Month), _____________(Year) at _____________________(Place)

BETWEEN

ABS NGA COMPANY LIMITED, a public company with limited liability incorporated under the Companies Act, 2013,with corporate identity number: ______________________________ and having its registered office at __________________________________ (hereinafter referred to as the "Mortgagor", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and permitted assigns);

AND

MST SERVICES LIMITED, a company incorporated under the provisions of the Companies Act, 2013 with corporate identification number: _____________________________________ and having its registered office at ________ _______________________________________ (hereinafter referred to as the "Mortgagee", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and substitutes from time to time).

The parties mentioned above are hereinafter collectively referred to as the "Parties" and individually as a "Party".

WHEREAS by a mortgage deed dated __________ the property mentioned in that deed was mortgaged by the said 'B' in favour of the said 'A' to secure payment of the amount of Rs ______________ with interest @ __________________ per cent per annum.

NOW THIS DEED OF RECONVEYANCE WITNESSETH:

That in consideration of all principal moneys and interest secured by the said mortgage deed dated ______________ having been paid, the receipt whereof the said 'A' hereby acknowledges.

The said 'A' as mortgagee hereby redeems or reconveys unto the said 'B' all the property comprised in the said mortgage deed to hold the same upto and to the use of the said 'B' as absolute owner discharged from all principal money and interest secured by and from all claims and demands under the aforesaid mortgage deed.

________________________________ ________________________________

First Party Second Party

________________________________ ________________________________

Witness 1 Witness 2

Schedule – Description of the Property

Debenture Trust Deed

What is Debenture?

A debenture is an instrument of debt executed by the company acknowledging its obligation to repay the sum at a specified rate and also carrying an interest. It is one of the methods of raising the loan capital of the company. A debenture is thus like a certificate of loan or a loan bond evidencing the fact that the company is liable to pay a specified amount with interest and although the money raised by the debentures becomes a part of the company's capital structure, it does not become share capital.

What is Debenture Trustee ?

A debenture trustee means a trustee of a trust deed for securing any issue of debentures of a body corporate.

A debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as prescribed.

The company shall appoint the debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest thereon.

Ingredients Debenture Trust Deed

Debenture Trust deed is a written instrument legally conveying property to a trustee often for the purpose of securing a loan or mortgage. It is the document creating and setting out the terms of a trust. It will usually contain the names of the trustees, the identity of the beneficiaries and the nature of the trust property, as well as the powers and duties of the trustees. It constitutes trustees charged with the duty of looking after the rights and interests of the debenture holders.

A trust deed in Form No. SH. 12 or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within three months of closure of the issue or offer.

A trust deed for securing any issue of debentures shall be open for inspection to any member or debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company; and a copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within seven days of the making thereof, on payment of fee.

FORM NO. SH-12

Debenture Trust Deed [Pursuant to sub-section (13) of section 71 of the Companies Act, 2013 and rule 11 of the Companies (Share Capital and Debentures) Rules 2014]

The debenture trust deed shall, *inter alia*, contain the following:-

1. DESCRIPTION OF DEBENTURE ISSUE:

(a) Purpose of raising finance through the debenture issue;

(b) Details of debenture issue as regards amount, tenure, interest/coupon rate, periodicity of payment, mode of payment and period of redemption;

(c) An undertaking by the company to pay the interest and principal amount of such debentures to the Debenture holders as and when it becomes due, as per the terms of offer;

(d) The terms of conversion/redemption of the debentures in terms of the issue to the debenture holders, options available, and debt equity ratio and debt service coverage ratio, if applicable.

2. DETAILS OF CHARGE CREATED (in case of secured debentures):

(a) Nature of charge created and examination of title;

(b) Rank of charge created viz. first, second, *pari passu*, residual, etc;

(c) Minimum security cover required;

(d) Complete details of the asset(s) on which charge is created such as description, nature, title, location, value, basis of valuation etc.;

(e) Methods and mode of preservation of assets charged as security for the debentures;

(f) Other particulars of the charge, e.g., time period of charge, rate of interest, name of the charge holder;

(g) Provision for subsequent valuation;

(h) Procedure for allowing inspection of charged assets and book of accounts by debenture trustee or any person or person authorized by it;

(i) Charging of future assets;

(j) Time limit within which the future security for the issue of debentures shall be created;

(k) Circumstances specifying when the security may be disposed of or leased out with the approval of trustees;

(l) Enforceability of securities, events under which security becomes enforceable;

(m) Obligation of company not to create further charge or encumbrance of the trust property without prior approval of the trustee.

3. PARTICULARS OF THE APPOINTMENT OF DEBENTURE TRUSTEE(S):

(a) The conditions and procedure for the appointment of the debenture trustee ;

(b) Procedure for resignation by trustee including appointment of new trustees;

(c) Provision that the debenture trustee shall not relinquish his office until another debenture trustee has been appointed;

(d) Procedure to remove debenture trustee by debenture holders providing for removal on a resolution passed by the holders of not less than three fourth in value of debentures;

(e) Fees or commission or other legal travelling and other expenses payable to the trustee(s) for their services;

(f) Rights of the trustee including the right to inspect the registers of the company and to take copies and extract thereof and the right to appoint a nominee director;

(g) Duties of the trustee.

4. EVENTS OF DEFAULTS:

(a) Events under which the security becomes enforceable which shall include the following events:

  (i) When the company makes two consecutive defaults in the payment of any interest which ought to have been paid in accordance with the terms of the issue;

  (ii) When the company without the consent of debenture holders ceases to carry on its business or gives notice of its intention to do so;

  (iii) When an order has been made by the Tribunal or a special resolution has been passed by the members of the company for winding up of the company;

  (iv) When any breach of the terms of the prospectus inviting the subscriptions of debentures or of the covenants of this deed is committed;

  (v) When the company creates or attempts to create any charge on the mortgaged premises or any part thereof without the prior approval of the trustees/debenture holders;

  (vi) When in the opinion of the trustees the security of debenture holders is in jeopardy.

(b) Steps which shall be taken by the debenture trustee in the event of defaults;

(c) Circumstances specifying when the security may be disposed off or leased out with the approval of trustees;

(d) A covenant that the company may hold and enjoy all the mortgaged premises and carry on therein and therewith the business until the security constituted becomes enforceable.

5. OBLIGATIONS OF COMPANY:

This section shall state the company's duty with respect to-

(a) maintaining a Register of debenture holders including addresses of the debenture holders, record of subsequent transfers and changes of ownership;

(b) keeping proper books of accounts open for inspection by debenture trustee;

(c) permitting the debenture trustee to enter the debentureholder's premises and inspect the state and condition of charged assets;

(d) furnishing information required by the debenture trustee for the effective discharge of its duties and obligations, including copies of reports, balance sheets , profit and loss account etc.;

(e) keeping charged property/security adequately insured and in proper condition;

(f) paying all taxes, cesses, insurance premium with respect to charged property/security, on time;

(g) not declaring any dividend to the shareholders in any year until the company has paid or made satisfactory provision for the payment of the installments of principal and interest due on the debentures;

(h) creating the debenture redemption reserve;

(i) converting the debentures into equity in accordance with the terms of the issue, if applicable;

(j) informing the debenture trustee about any change in nature and conduct of business by the company before such change;

(k) informing the debenture trustee of any significant changes in the composition of its Board of Directors;

(l) informing the debenture trustee of any amalgamation, merger or reconstruction scheme proposed by the company;

(m) keeping the debenture trustee informed of all orders, directions, notices, of court/tribunal affecting or likely to affect the charged assets;

(n) not creating further charge or encumbrance over the trust property without the approval of the trustee;

(o) obligation of the company to forward periodical reports to debenture trustees containing the following particulars:

  (i) updated list of the names and addresses of the debenture holders;

  (ii) details of interest due but unpaid and reasons thereof;

  (iii) the number and nature of grievances received from debenture holders and (a) resolved by the company (b) unresolved by the company and the reasons for the same;

  (iv) a statement that the assets of the company which are available by way of security are sufficient to discharge the claims of the debenture holders as and when they become due.

(p) complying with all directions/guidelines issued by a Regulatory authority, with regard to the debenture issue;

(q) submitting such information, as required by the debenture trustee.

6. MISCELLANEOUS:

(a) The conditions under which the provisions of the trust deed or the terms and conditions of the debentures may be modified;

(b) The mode of service of notices and other documents on the company, the trustee and the holders of the debentures;

(c) The company to be responsible for paying any stamp duty on the trust deed or the debentures (if applicable);

(d) Provisions regarding meetings of the debenture holders;

(e) Provisions for redressal of grievances of debenture holders.

Specimen Debenture Trust Deed

This DEBENTURE TRUST DEED is executed on this ______ day of ________________________, 20_____ at __________________________.

BETWEEN

ABS COMPANY LIMITED, a public company with limited liability incorporated under the Companies Act, 2013, with corporate identity number: ________________________________ and having its registered office at ____________________________________ (hereinafter referred to as the “Company”, which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and permitted assigns);

AND

MST SERVICES LIMITED, a company incorporated under the provisions of the Companies Act, 2013 with corporate identification number: ____ and having its registered office at ________ ____ (hereinafter referred to as the “Trustee”, which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and substitutes from time to time).

The parties mentioned above are hereinafter collectively referred to as the “**Parties**” and individually as a **“Party”**.

WHEREAS:

A. The Company is engaged in the business of ____ ________.

B. The details of the authorised, issued , subscribed and paid-up share capital of the Company as on March 31, 20_____ is as under:

1) Authorised	
Equity Share of Re. 1/- each	1,00,00,00,000
2) Issued, Subscribed and Paid-Up	
Equity Share of Re. 1/- each fully paid-up	1,00,00,00,000

C. The Company has pursuant to:

(a) the approval of its board of directors in terms of the resolution passed under Section 179(3)(c) of the Companies Act at the meeting held on _______________, 20_______, for the issuance of the Debentures;

(b) the approval of its committee of directors in terms of the resolution passed on ___________________, 20_____, for the issuance of the Debentures; and

(c) the approval of its shareholders in terms of the special resolution passed under Section 180(1)(c) of the Companies Act at the meeting held on ______________________, 20_____, issued and allotted Debentures for an aggregate nominal amount of up to Rs_________________ (Rupees_____________________________) pursuant to the Offer Letter and the Information Memorandum.

D. The Company has appointed the Trustee as the debenture trustee in relation to the Debentures, and the Trustee has consented to act as trustee for the Debenture Holders pursuant to the Debenture Trustee Agreement.

E. The Debentures are 'secured debentures' for the purposes of the Companies Act read with the Companies (Share Capital and Debentures) Rules, 2014.

F. As per the terms of the Offer Letter, the Company is required to execute this Deed within 60 (sixty) days from the Date of Allotment, and as per the terms of the issue of the Debentures, the Trustee has called upon the Company to execute this Deed.

NOW, THEREFORE, in consideration of the premises and mutual agreements and covenants contained in this Deed and other good and valuable consideration (the receipt and adequacy of which are hereby mutually acknowledged), the Parties hereby agree as follows:

1. That in these presents unless there be something in the subject or context consistent therewith the expression following shall have the meaning hereafter mentioned, that is to say:

   (a) "Company" means _________________________ Ltd.

   (b) "Trustees" means Mr_______________ or any other trustees hereof for the time being.

   (c) "Debentures" means the debenture of the company in the form set out in the First Schedule hereto for the time being outstanding and entitled to the benefit of these presents.

   (d) "Debenture holders" means the holder for the time being of the debenture issued and entered in the register of debenture holders, mentioned on the conditions endorsed on the debentures on the holder of the debentures.

   (e) "Mortgaged premises" means the property belonging to the company described in the Second Schedule hereto and comprised in the security of the debenture holders.

   Words denoting the singular include the plural and vice versa unless the contrary appears from the context.

   (f) Act means the Companies Act, 2013 and any modification or re-enactments thereof.

Terms of Debentures

2. The debentures entitled to the benefit of these presents shall consist of a series of number of debentures of Rs___________ each, aggregating to Rs ___________ in all to rank *pari passu* without any preference or priority by reason of the date of issue or otherwise and secured by the mortgage hereby created on the mortgaged premises.

3. The company hereby covenants with the trustees that the company will on the______ day of__________ or such earlier day as the principal moneys shall become payable under clause 7 hereof pay the debenture holders the amounts secured by their debentures respectively, and in the meantime will pay interest to the debenture holders on the day of ___________,20_____ in each year, the first payment of interest to be made on the day of ___________,20_____.

4. All payments due by the company in respect of the Debentures issued hereunder whether of interest, principal or premium shall be made by cheque or warrant drawn by the company on its bankers and the company shall make at its own expenses all arrangements, with its Bankers as shall be necessary to ensure that such cheques or warrants shall be encashable for the amount for which they are expressed without any deduction whatsoever at the office of its bankers in Delhi or such other places in the Union of India as the Trustees may require.

5. In consideration of the debentures hereby authorised aggregating to Rs _________________ the company, as the beneficial owner, hereby mortgages unto the trustees all the fixed plant and machinery and fixture at present existing at the company's factory and described in part A of the Second Schedule

hereto and which may be acquired by the company hereafter or fixed or erected hereafter at its factory for the benefit of the debentureholders and the property described in Part B of the Second Schedule as security for the due payment of principal moneys amounting to Rs__________________ in aggregate with interest and all other charges, expenses and other dues, the payment of which has been secured by a charge on the mortgaged premises under these presents.

The charge hereby created on the property mentioned in Part A of the Second Schedule shall be the specified charge, while that on the property included in Part B of the Second Schedule shall rank as floating charges. The trustees may, at any time, by notice in writing to the company, convert the said floating charge into a specific charge as regards any assets included in the Second Schedule and specified in the notice in case it is, in the opinion of the trustees in danger of being seized or sold under any sort of distress or execution levied or threatened or in any other case.

6. The company shall hold and enjoy all the mortgaged premises and carry on therein and therewith the business or any of the business mentioned in the Memorandum of Association of the company until the security hereby constituted shall become enforceable under the terms of these presents, in which case the trustees may, in their discretion, without any such request as next hereinafter mentioned and shall upon the request in writing of the holder or holders of ____________________ at least of the debentures, enter upon or take possession of the mortgaged premises, or any of them and may in the like discretion and shall upon the like request sell, call in, collect and convert into money the same or any part thereof with full power to sell any of the same premises either together or in parcels, and either by public auction or private contract, and either for a lumpsum or for a sum payable by instalments or for a sum on account and a mortgage or charge for the balance and with full power upon every such sale to make any special or other stipulations as to title or evidence, or commencement of the title or otherwise which the trustees shall deem proper and with full power to modify or rescind or vary any contract for sale of the said premises or any part thereof and to re-sell the same without being responsible for any loss which may be occasioned thereby and with full power to compromise and effect compositions and for the purposes aforesaid or any of them to execute and do all such assurance and things as they shall think fit.

7. The principal moneys due to the debenture-holders under this Indenture shall become immediately payable and the security hereby constituted shall become enforceable within the meaning of these presents in each and any of the following events:

(a) If the company makes default in the payment of any interest which ought to be paid in accordance with these presents.

(b) If the company without the consent of debenture holders ceases to carry on its business or gives notice of its intention to do so.

(c) If an order has been made by the Court of competent jurisdiction or a special resolution has been passed by the members of the company for winding up the company.

(d) If the company acts in contravention of clause________ of its Articles of Association.

(e) If it is certified by a Chartered Accountants capable of being appointed as auditor under the Act, that the liabilities of the company exceed its assets.

(f) If the company creates or attempts to create any charge on the mortgaged premises or any part thereof without the prior approval of the trustees/debenture holders.

(g) If in the opinion of the trustees the security of debenture holders is in jeopardy.

Provided that on the happening of the events specified in sub-clause (a), the permission given by clause 6 to hold and enjoy the mortgaged premises shall not be determined unless and until the trustees shall have first served on the ________________ company a preliminary notice requiring the company to pay the interest in arrears and the company shall have neglected for the period of 30 days to comply with such notice.

8. As soon as the principal money shall become payable and the security enforceable under the last preceding clause 7 (and unless the time for payment and the security to be enforced has been expressly extended by the debenture holders), the trustees shall enter upon and take possession of the mortgaged premises and shall forthwith take steps to consult the debenture holders for the purpose of determining whether the business of the company may be allowed to be carried on or whether the mortgaged premises shall be realised by sale or otherwise.

9. Until the happening of some one of the events mentioned in clause no. 7 of this Indenture, the trustees shall not be in any manner bound to interfere with the management of affairs of the said business except to the extent they may consider necessary for the preservation of the mortgaged premises or any part thereof.

10. If the debenture-holders resolve not to allow the business of the company to be carried on as mentioned in clause 9 above but to realise the security, the trustees shall after giving a notice of 30 days in writing to the company, proceed to realise the mortgaged premises by sale or otherwise and, in doing so, shall conform to discretion, if any, given by debenture-holders.

11. The trustees shall apply the proceeds of such sale or other mode of realisation in the following manner, that is to say, that the trustees shall pay:

    (a) In the first place all costs, charges and expenses incurred in or about such sale or the performance or execution of trust or otherwise in relation to these presents or otherwise in respect of the security, including the remuneration of the trustees.

    (b) Secondly, the interest for the time being due and owing on the debentures.

    (c) Thirdly, the principal money then due and owing to debenture-holders.

    (d) And lastly, the surplus, if any, to the company or its assignee.

    Provided that if the said money shall be insufficient to pay all such interest or principal money in full, then the said moneys shall be paid rateably and without preference or priority among all debenture-holders of this series according to the amount of the face value of the debentures held by them, but all interest shall be paid before any principal money.

12. When all the principal moneys and secured by these presents shall have been paid and satisfied, the trustees shall forthwith, upon the request and at the cost of the company and on being paid all the costs, charges and expenses properly incurred by the trustees in relation to the security, reconvey, reassign, release and surrender the mortgaged premises or so much or the same as shall not have been sold or disposed of, unto the company or its assigns.

13. If the company shall, at any time during the continuance of the security, be desirous of selling, demising or otherwise disposing of or dealing with any part of the mortgaged premises otherwise than in respect of the floating charge the ordinary course of the company's business, the trustees may, if satisfied that the debenture-holders' security shall not be thereby prejudiced, assent to or concur in such sale, demise, disposal or other dealing, and may, if necessary, release the property in question from the trust under this deed on such terms as the trustees may determine.

14. The company hereby covenants with the trustees:

    (i) That the moneys secured by this deed shall be the first mortgage and charge on the mortgaged premises and shall take precedence over all other moneys which may hereinafter be borrowed by the company against the security of the premises.

(ii) that the company shall maintain the mortgaged premises and any and every part thereof in a fit and efficient condition of repair and shall keep the said property duly insured against risk of fire, riot, civil and war risks with such insurers and in such manner as the trustees may determine from time to time and, in default, the trustees shall carry out repair and keep insured the mortgaged premises in the interest of the debenture-holders, and shall be entitled to the immediate payment of such expenditure in full.

15. (a) The company shall in each and every year during the continuance of this security pay to the Trustees for the time being of these presents as and by way of remuneration for their services as Trustees the sum of Rs ______________ (Rupees ________________________ only) per annum in addition to all legal, travelling and other costs, charges and expenses incurred by the Trustees on their officers, employees or agents in connection with the execution of the trust hereof (including all the costs, charges and expenses of and incidental to the approval and execution of these presents) and all other documents effecting the security herein and the first of such payments to be made proportionately for the period and the said remuneration shall continue to be payable until the trust hereof shall be finally discharged. The trustees acknowledge having received from the company a sum of Rs __________________ (Rupees ___________________ only) as their fee for agreeing and accepting the trusteeship of these presents.

(b) The company shall pay to the trustees all legal travelling and other costs, charges and expenses incurred by them or their agents in connection with execution of trusts of these presents including costs, charges and expenses of and incidental to the approval and execution of these presents and all other documents affecting the security herein and will indemnify them against all actions, proceedings, costs, charges, expenses, claims and demands whatsoever which may arise or be brought or made against or incurred by them in respect of any matter or thing done or permitted to be done without their wilful default in respect of or in relation to the mortgaged premises.

16. The debenture holders may, by an ordinary resolution, remove the trustee or trustees, or the trustee or trustees may, with the consent of the directors of the company and of the majority of the debenture holders in writing resign or retire from trusteeship.

17. In the event of death, bankruptcy, disability or resignation of any trustee or trustees, another trustee or trustees shall be appointed who shall thereafter have and exercise all powers of the trustee or trustees under these presents. The power of appointing a new trustee or trustees shall be vested in the directors, but no such trustees shall be appointed by the company until his appointment has been approved by an ordinary resolution of the debenture holders.

18. The trustees may by agreement with the directors of the company modify the terms of the deed in any manner that may be necessary to meet any requirement or contingency, provided that the trustees are satisfied that such modifications are in the interests of the debenture holders.

19. If any debenture is proved to the satisfaction of the company to have been lost, the company shall issue a fresh debenture on payment of a fee of Rs ______________________ for each such debenture and on such indemnity as the directors may think fit.

21. The company hereby covenants with trustees that company will at all times during the continuance of the security (except as may be otherwise previously agreed in writing by the trustees).

(a) carry on and conduct its business in proper and efficient manner with due deligence and efficiency with sound financial standing and pay all rents, cesses on mortgage premises, and insured these properties against fire and natural calamities;

(b) to keep proper books of account as required under the Act and let them be open to inspection of trustees during business hours;

(c) to give trustees such information as he or they may require relating to business, mortgage property and the affairs of the company;

(d) not to effect any scheme of amalgamation, merger or reconstructions during the period of debenture or any part thereof remain outstanding;

(e) not to utilise any portion of the debentures for purposes other than those for which the same are issued;

(f) not to make any material changes in the existing management set up. Not to declare any dividend to the equity (or preference shareholders, if any) in any year until the company has paid or made satisfactory provision for payment of the instalments of principal (if it has become due) and interest due on the debentures;

(g) allow the debenture holders a right to appoint a nominee director on the Board of the company. The said director so appointed shall not be liable for rotation nor required to hold any qualification. Thus, if need be, the company shall take immediate steps to amend its Articles of Association accordingly.

22. The company hereby further covenants with the Trustees that the company shall duly perform and observe the obligations hereby imposed upon it by this deed.

IN WITNESS WHEREOF THE COMPANY has caused its Common Seal to be affixed to these presents and the trustees have hereto set their hands the day and year above written.

Common Seal (if any) of the__________________________

________________________________ ________________________________

First Party Second Party

________________________________ ________________________________

Witness 1 Witness 2

Annexures

1. First Schedule
2. Second Schedule

Share Purchase Agreement

A share purchase agreement is defined as a legal contract between a seller and a buyer of shares. They may be referred to as the vendor and purchaser in the contract. The specific number of shares are listed in the contract at the stated price. This agreement proves that the sale and the terms of it were agreed upon mutually.

Share Purchase Agreement is an agreement entered into between the buyer and seller(s) of shares of a target company. Usually Share Purchase Agreements entail that the buyer would be taking over whole or significantly whole of the undertaking of the company. In such a scenario, the buyer would not only be taking over the assets but also the liabilities of a company.

Prior to drafting a Share Purchase Agreement, the parties should negotiate and draw up a term sheet which would address the key terms of the Share Purchase Agreement. This would help ease the drafting and negotiations of the Share Purchase Agreement as all the material terms would already be agreed to between the parties.

A share purchase agreement sets out specific rights and liabilities related to the purchase and sale of shares in a particular entity. It is important to set out the requirements related to a share purchase agreement. Usually a share purchase agreement would be typically used in the mergers and acquisitions processes. A particular entity would purchase about 50% or more of the share capital of the target company.

Advantages of Share Purchase Agreement

- **Shares Specified-** By entering into this form of agreement, there is a specific proportion of shares allocated to the buyer or the entity.
- **Rights and Liabilities-** The rights and liabilities of the parties are specifically drawn from this form of agreement. This would ensure that all the parties' rights and liabilities arising out the agreement are covered. In case of any breaches, the parties' first point of reference would be the SPA.
- **Warranties-** By entering into such an agreement the parties would be covered by specific warranties. Any party cannot escape the amount of any warranty which is arising from the share purchase agreement. All the parties would equally be covered by specific amount of warranties of the share purchase agreement.
- **No Third-Party Involvement-** As the contract has only specific amount of parties, there is no involvement of any other party or third-party.

Key Contents of Share Purchase Agreement

- ✓ Details of the buyer, seller and the company.
- ✓ The liabilities and obligations of both parties.
- ✓ The permissions, authorisations, etc. need to be taken before the transfer or sale of shares by the shareholder.
- ✓ Details of the number of shares and kind of shares purchased.
- ✓ Information about the pricing at which the shares are sold by the company.
- ✓ The rights that are given to the shareholder.
- ✓ Dispute resolution and arbitration process in cases of legal disputes arising.
- ✓ Jurisdiction of the court and law applicable in case of a legal dispute.

Share Purchase Agreement is an agreement entered into between the buyer and seller(s) of shares of a target company. Usually Share Purchase Agreements entail that the buyer would be taking over whole or significantly whole of the undertaking of the company. In such a scenario, the buyer would not only be taking over the assets but also the liabilities of a company. Hence any potential buyer needs to take proper stock of the company before entering into such a transaction.

Specimen Share Purchase Agreement

This SHARE PURCHASE AGREEMENT ("Agreement") is entered into on this _______ day of _______________________(month), ______________(year),

BETWEEN

(1) ________________________________, a company duly incorporated under the Companies Act, 2013 and having its registered at ____________________________________(hereinafter referred to as the "Company", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the FIRST PART;

(2) ____________________ S/o __________________ R/o ____ (hereinafter referred to as the "Acquirer", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the SECOND PART;

(3) _________________________ D/o_________________________ R/o____________________________________ referred to as "Seller" which expression shall, unless repugnant to the context or meaning thereof, mean and include their respective legal heirs, successors, legal representatives, administrators, executors and assigns) of the THIRD PART.

(The Acquirer, the Seller and the Company shall be individually referred to as a "Party" and collectively referred to as the "Parties", as the context may require).

RECITALS

WHEREAS:

A. The Company is a private limited company engaged in the business of _____________________________.

B. The authorized share capital of the Company is INR ______________ (Indian Rupees Only) and divided into ________ Equity Shares of INR _______________ (Indian Rupees ____________________Only) each. The issued and paid up share capital of the Company is INR ___________________ (Indian Rupees ________________ Only) and divided into _________ Equity Shares of INR _________________ (Indian Rupees ____________________ Only) each.

C. As on the Effective Date, the Seller holds and owns ___________ Equity Shares, in the aggregate constituting [______%] of the Share Capital of the Company.

D. Acquirer desires to acquire the Shares, constituting of the [_______%] of the shareholding of the Seller in the Company. Consequently, Acquirer has offered to acquire the Shares from the Seller and the Seller have agreed to sell and transfer the said Shares (free from all Encumbrances and together with all rights, title and interest therein on the terms and conditions set forth in this Agreement) to Acquirer for the Purchase Price (at par value of Rs. _______ each share).

E. The Sale Shares shall represent (______%) of the Share Capital on a Fully Diluted Basis.

F. The Seller, the Company, and Acquirer have agreed to make certain representations, warranties, covenants and agreements in connection with the transactions contemplated by this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS, THE REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS CONTAINED IN THIS AGREEMENT AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND ADEQUACY OF WHICH ARE NOW ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

1.1 Defined Terms

The terms below have the following meanings when used in this Agreement in capitalised form unless otherwise expressed:

a. "Agreement" or "the Agreement" or "this Agreement" shall mean this Share Purchase Agreement and shall include the recitals hereto, and the contracts, certificates, disclosures and other documents to be executed and delivered pursuant hereto, if any and any amendments made to this Agreement by the Parties in writing.

b. "Assets" means assets or properties of every kind, nature, character and description (whether immovable, movable, tangible, intangible, absolute, accrued, fixed or otherwise) as operated, hired, rented, owned or leased by a Person from time to time, including cash, cash equivalents, receivables, securities, accounts and note receivables, real estate, plant and machinery, equipment, trademarks, brands, other intellectual property, raw materials, inventory, furniture, fixtures and insurance owned or used by the Company as of the relevant date.

c. "Board" or "Board of Directors" shall mean and include the Board of Directors of the Company or any committee thereof, as constituted from time to time.

d. "Business" has the meaning set out in Recital.

e. "Business Day" means any day other than a Saturday, a Sunday, a public holiday or a day on which banking institutions in [____________________, India]are authorised or obligated by Law to be closed.

f. "Claims" means any demand, claim, action, cause of action, notice, suit, litigation, prosecution, mediation, arbitration, enquiry, assessment or proceeding made or brought by or against a Party, however arising and whether present, unascertained, immediate, future or contingent, losses, Liabilities, Damages, costs and expenses, including reasonable legal fees and disbursements in relation thereto.

g. "Closing Date" shall mean the date on which the closing occurs, which shall be on or before ________________(date).

h. "Companies Act" means the Companies Act, 2013, to the extent notified, and all amendments or statutory modifications thereto or re-enactment thereof, except where otherwise expressly provided.

i. "Conditions Precedent" means the conditions precedent to Acquirer's purchase of the Sale Shares as set out in this Agreement.

j. "Effective Date" means the date of execution of this Agreement.

k. "Equity Share" means ordinary equity share of face value INR ______/- (Indian Rupees _____ only) each in the Company.

l. "Fully-Diluted Basis" means the total of all classes of shares outstanding on a particular date, combined with all options (whether exercised or not), warrants (whether exercised or not), convertible securities of all kinds, any other arrangements relating to the Company's equity, and the effect of any anti-dilution protection regarding previous financings, all on an "as if converted" basis whereas if converted" basis means as if such instrument, option or security had been converted into Equity Shares.

m. "Governmental Approval" means a permit, license, consent, approval, certificate, qualification, specification, exemption, registration or other authorisation including filing of a notification, report or assessment obtained or to be filed as the case may be as per the applicable Laws in India with any governmental, semi-governmental, administrative, fiscal, quasi judicial or judicial body or entity in India.

n. "INR", "Indian Rupees" or "Rupees" means the lawful currency of India.

o. "Liabilities" means with respect to any person any direct or indirect liability, Indebtedness, obligation, expense, deficiency, guaranty or endorsement of or by such person of any type, known or unknown, and whether accrued, absolute, contingent, unmatured, matured, otherwise due or to become due.

p. "Person" means any individual, firm, company, Governmental Authority, joint venture, association or partnership (whether or not having separate legal personality).

q. "Purchase Price" means an amount of Rs. _______________ only to be paid by Acquirer to the Seller towards the acquisition of the Sale Shares.

r. "Relative" shall have the meaning as set forth in Section 2(77) of the Companies Act, 2013;

s. "Sale Shares" means ______________Equity Shares held by the Seller constituting _______% of the share capital of the Company on a Fully Diluted Basis.

t. "Shareholders Agreement" means the agreement executed between the Company, Acquirer and the Seller as of the Closing Date setting out the terms governing their relationship inter-se;

u. "Shareholders" shall mean the shareholders, from time to time, of the Company;

v. "Transaction Documents" means this Agreement and any other agreement, document, certificate, consent, undertaking or instrument delivered by the Parties and/or their Affiliates pursuant to or in connection with this Agreement including the Shareholders Agreement.

w. "Transfer" (including with correlative meaning, the terms "Transferred by" and "Transferability") shall mean to transfer, sell, assign, pledge, hypothecate, create a security interest in or lien on, place in trust (voting or otherwise), exchange, gift or transfer by operation of Law or in any other way subject to any Encumbrance or dispose of, whether or not voluntarily.

SECTION 2. PURCHASE AND SALE OF SHARES

2.1 Subject to the satisfaction or waiver of the Conditions Precedent immediately prior to Closing, Acquirer shall, on the Closing Date, purchase from the Seller and the Seller shall sell to Acquirer, as the legal and beneficial owner, the Sale Shares free and clear from all Encumbrances and together with all rights, title, interest and benefits appertaining thereto (the "Share Purchase"), for the Purchase Price paid by the Acquirer to the Seller.

2.2 The Seller hereby agree and warrant that pursuant to the receipt of the Purchase Price from Acquirer on the Closing Date, the title of the Sale Shares, shall pass on to the Acquirer, free of all Encumbrances whatsoever and together with all legal rights and advantages now and hereafter attaching or accruing thereto, so that the Acquirer will upon the Transfer of the Sale Shares in its name, receive full legal and beneficial ownership thereof.

2.3 Execution Date Deliverables. Simultaneously with the execution of this Agreement on the Effective Date:

a. the Company shall deliver to the Acquirer a copy certified by a duly authorized director of the Company, of the resolutions duly passed by the Board, approving the execution by the Company of the Transaction Documents;

b. the Company shall properly execute the Share Transfer Form(SH-4) as defined under Companies Act, 2013 with proper stamp duties.

c. the Acquirer shall deliver to the Company and Seller certified by a duly authorized director of the Company, of the resolutions duly passed by the Board, approving the execution by the Company of the Transaction Documents.

2.4 The Parties shall do or cause to be done all such further acts, deeds, matters and things and execute such further documents and papers as may be reasonably required to give effect to sale and Transfer of the Sale Shares under the Agreement.

SECTION 3. CONDITIONS PRECEDENT

3.1 Seller' Conditions Precedent to Closing. The obligations of the Acquirer to purchase and pay for the

Sale Shares on Closing Date are subject to the satisfaction, or waiver in writing by the Acquirer at or prior to the Closing, of the following conditions.

a. Compliance with obligations. The Company and the Seller shall have performed and complied in all respects with all agreements, obligations and conditions contained in the Agreement that are required to be performed or complied with on or before Closing and shall have obtained all approvals, consents and qualifications necessary to complete the sale and purchase of the Sale Shares;

b. Capital Structure and Shareholding. No change in the capital structure of the Company or shareholding of the Seller or rights attached to the Equity Shares shall have occurred other than pursuant to the Transaction Documents.

c. Absence of Material Adverse Effect. There shall not have been, on or prior to the Execution Date or as of the Closing Date, any event, condition or circumstance of any character that, individually or in the aggregate, constitute(s) or is reasonably expected to have a Material Adverse Effect.

d. Corporate Actions. The Board shall have approved the execution of the Transaction Documents by the Company3

e. Execution of Transaction Documents. All Transaction Documents, other than this Agreement, shall have been duly executed, stamped and delivered by the parties thereto.

3.2 Acquirer's Conditions Precedent to Closing. The obligations of the Seller and Company to sell the Sale Shares on Closing Date are subject to the satisfaction, or waiver at or prior to the Closing, of the following conditions.

a. Compliance with obligations. The Acquirer shall have performed and complied in all respects with all agreements, obligations and conditions contained in the Agreement that are required to be performed or complied with on or before Closing and shall have obtained all approvals, consents and qualifications necessary to complete the sale and purchase of the Sale Shares;

b. Consents and Waivers. The Acquirer will have obtained all necessary consents, waivers and no-objections in writing from any Person as may be required under any applicable Law or contract or otherwise for the execution, delivery and performance of the Transaction Documents, including without limitation, Consents, waivers and no-objections;

c. Execution of Transaction Documents. All Transaction Documents, other than this Agreement, shall have been duly executed, stamped and delivered by the parties thereto.

3.3 Co-operation. The Parties shall cooperate with each other in good faith and provide all requisite assistance for the satisfaction of any of the Conditions Precedent upon being reasonably requested to do so by the other Party. If any Party becomes aware of anything which will or may prevent any of the Conditions Precedent from being satisfied before the Long Stop Date, the relevant Party shall notify the other Party in writing as soon as practicable.

SECTION 4. pre closing actions

4.1 Between the Effective Date and the Closing (the "Interim Period"), except as expressly permitted or required by this Agreement or with the prior written consent of the Acquirer, the Company and the Seller shall:

a. not directly or indirectly initiate or engage in discussions or negotiations with any other Person for the purpose of any transactions in respect of any Equity Shares or Assets of the Company, including creation of any interest, direct, indirect, current, future or contingent, in the Equity Shares or Assets of the Company;

b. not carry out any action or omission which may affect the proposed transaction under this Agreement or which may reduce or dilute the effective shareholding of the Acquirer upon Closing or which may change the shareholding of the Seller;

c. not pass any resolution of the Shareholders or Board, which is inconsistent with any provision of, or transactions contemplated under, the Transaction Documents;

d. carry-on the Business only in the ordinary course of business;

e. comply with all applicable Laws relating to the Business;

f. not make any amendments to the Memorandum or Articles of the Company except as contemplated in this Agreement; and

g. not agree or otherwise commit to take any of the actions described in the foregoing sub sections (a) through (f).

4.2 Reporting requirements. During the Interim Period, the Company and the Seller shall promptly advise the Acquirer in writing of any event, occurrence, fact, condition, change, development or effect that, individually or in the aggregate, has had or may reasonably be expected to have a Material Adverse Effect.

4.3 Access to Board Meetings, Properties, Etc. The Seller and Company shall allow the Acquirer and its representatives to have reasonable access until the Closing Date, during normal business hours and upon reasonable notice, to the Company's properties, Books and Records, and other relevant documents.

SECTION 5. CLOSING, DELIVERY AND PAYMENT

5.1 Closing. The Seller shall Transfer and deliver to the Acquirer, and the Acquirer shall, upon reliance on, amongst other things, the representations, warranties and undertakings contained in this Agreement, receive and take delivery from the Seller, all of the right, title and interest of the Seller in the Sale Shares free and clear from all Encumbrances, together with the share certificates and duly stamped and executed share transfer forms in relation to the Sale Shares. The Transfer or procurement of the Transfer of the Sale Shares by the Seller to the Acquirer shall constitute the closing of the Share Purchase ("Closing").

5.2 Closing Payment and Actions. At Closing, in exchange for the Sale Shares and the delivery or performance by Seller of all those documents, items and actions as may be required to enable the Acquirer to be the legal and registered owner of the Sale Shares, the Acquirer has paid to the Seller, the Purchase Price (Rs. ____________) by way of banking channel (IMPS Ref No. ________________). At Closing the following events shall take place:

a. The Seller shall deliver to the Acquirer the share certificate(s) representing the Shares sold by such Seller, accompanied by duly stamped and executed share transfer form (Form SH-4) as prescribed under the Companies Act.

b. the Company shall and the Seller shall cause the Company to convene a meeting of the Board for: i. taking on record the duly executed and stamped share transfer forms in respect of the Sale Shares; and ii. approving the Share Purchase of Shares from the Seller to the Acquirer;

c. the Company shall make the necessary filings under applicable Law and execute all other documents as may be necessary for the conclusive Transfer of the Sale Shares in the name of the Acquirer;

d. the Company shall make the necessary entries in its register of members and register of share transfer to record the Transfer of the Sale Shares from the Seller to the Acquirer.

5.3 Deliverables at Closing. At the Closing the Company shall deliver to the Acquirer the following documents:

a. Certified extract of the resolutions passed by the Board approving the transfer of the Sale Shares from the Seller to the Acquirer.

b. Certified extract of the register of members and the share transfer register of the Company evidencing the entries relating to the transfer of the Sale Shares from the Seller to the Acquirer.

c. Certificate, dated as of the Closing Date, executed by Company and the Seller, certifying that the representation and warranties made by the Seller and the Company as set out in this Agreement are true and correct as of the Closing.

d. A certificate, dated as of the Closing executed by Company and the Seller, certifying to the fulfilment of the Execution Date Deliverables set forth in this Agreement.

e. Share certificate(s) with respect to the Shares with endorsement of name of the Acquirer on the same. f. Any other document as may be reasonably required by the Acquirer pursuant to Closing under this Agreement.

5.4 Upon Closing, the Acquirer shall hold ________ Equity Shares of the Company pursuant to Share Purchase, constituting[_______]% of the Fully Diluted Share Capital of the Company.

SECTION 6. REPRESENTATIONS AND WARRANTIES

6.1 Representation and Warranties of the Seller. The Seller and Company represents and warrants to the Acquirer that each of the statements set out below (Warranties of the Seller) is now and will be true and accurate as of the Effective Date (which representations and warranties shall be deemed to be repeated as of the Closing Date by reference to the facts and circumstances then existing as if references in such representations and warranties to the Effective Date were references to the Closing Date).

6.2 Authorisation by Seller. This Agreement has been duly authorised, executed and delivered by the Seller and the Company and creates legal, valid and binding obligations of the Seller, enforceable in accordance with its terms. No consent, approval or authorisation of any Person or entity is required in connection with the Seller' execution or delivery of this Agreement or the consummation by the Sellerof the transactions contemplated by this Agreement, except for the approval of the Board to the transfer of the Sale Shares from the Seller to the Acquirer.

SECTION 7. INDEMNIFICATION AND DAMAGES

7.1 In consideration of the purchase of the Sale Shares by the Acquirer from the Seller hereunder, each defaulting Party ("Indemnifying Party") agrees to indemnify, defend and hold harmless, the other non-defaulting Party, its Affiliates and each of their respective partners, officers, employees, shareholders, partners, agents, as the case maybe (each, an "Indemnified Party" and collectively the "Indemnified Parties") from and against, any and all, damages, Losses, Liabilities, obligations, fines, penalties, levies, action, investigations, inquisitions, notices, suits, judgments, claims of any kind including third party claims, interest, governmental and statutory action, costs, litigation and arbitral costs, taxes or expenses (including without limitation, reasonable attorney's fees and expenses) (collectively referred to as "Loss") suffered or incurred, directly or indirectly by any Indemnified Party.

SECTION 8. MISCELLANEOUS.

8.1 Confidentiality:

a. Each Party shall keep all information relating to each other Party, information relating to the transactions herein and this Agreement (collectively referred to as the "Information") confidential.

None of the Parties shall issue any public release or public announcement or otherwise make any disclosure concerning the Information without the prior approval of the other Party; provided however, that nothing in this Agreement shall restrict any of the Parties from disclosing any information as may be required under applicable Law subject to providing a prior written notice of 10 (Ten) Business Days to the other Parties (except in case of regulatory inquiry or examination, and otherwise to the extent practical and permitted by Law) . Subject to applicable Law, such prior notice shall also include

(a) details of the Information intended to be disclosed along with the text of the disclosure language, if applicable; and

(b) the disclosing Party shall also cooperate with the other Parties to the extent that such other Party may seek to limit such disclosure including taking all reasonable steps to resist or avoid the applicable requirement, at the request of the other Parties.

8.2 Amendments. No amendment or variation of this Agreement shall be binding on any Party unless such variation is in writing and duly signed by all the Parties.

8.3 Independent Rights. Each of the rights of the Parties under this Agreement are independent, cumulative and without prejudice to all other rights available to them, and the exercise or non-exercise of any such rights shall not prejudice or constitute a waiver of any other right of a Party, whether under this Agreement or otherwise.

8.4 Any date or period as set out in any Section of this Agreement may be extended with the written consent of the Parties failing which time shall be of the essence.

8.5 Governing Law: This Agreement and the relationship between the Parties shall be governed by, and interpreted in accordance with, the Laws of India, the courts in [Rajasthan], India shall have the jurisdiction over all matters arising pursuant to this Agreement.

8.6 Dispute Resolution

a. If any dispute or difference arises between any of the Parties hereto during the subsistence of this Agreement or thereafter, in connection with the validity, interpretation, implementation or alleged material breach of any provision of this Agreement or regarding any question, including the question as to whether the termination of this Agreement by any Party hereto has been legitimate, the Parties hereto shall endeavor to settle such dispute amicably.

b. All disputes, differences or Claims arising out of or in connection with this Agreement including, any question regarding its existence, validity, construction, performance, termination or alleged violation which is not resolved shall be finally resolved by arbitration conducted in accordance with Indian Arbitration and Conciliation Act of 1996 along with the rules framed thereunder. The Parties to the dispute shall share the costs equally or in the proportion as decided by the arbitrator/ arbitral tribunal.

8.7 The provisions of this Agreement and the charter documents shall (as far as possible) be interpreted in such a manner as to give effect to all such documents;

Provided however, that in the event of an inconsistency between this Agreement and the charter documents, to the extent permitted by applicable Law, provisions of this Agreement shall prevail as between the Parties and shall govern their contractual relationship and the Parties shall cause the necessary amendments to the charter documents.

IN WITNESS, the Parties have executed this Share Purchase Agreement as of the date first written above.

ACQUIRER	SELLER	COMPANY

Witness 1 Witness 2

Share-holders Agreement

A shareholders' agreement is a contract between the shareholders of a company and the company itself. It ties the shareholders to rules to preempt issues that might become contentious in the future. A shareholders' agreement mentions the shareholders' rights and obligations, regulates the ownership of shares, privileges, the management of the company, voting and various other insulative provisions for shareholders.

It is a known fact that the Articles of Association (*hereinafter* 'AoA') act as the Constitution for a company and thus they are mandatory and standard in nature. AoA ties a company and its shareholders in their capacity as shareholders and further mentions the responsibilities of the directors, the means by which the shareholders exert control over the board of directors and the kind of business to be undertaken.

When it comes to a shareholders' agreement the protection of the shareholders is given more importance. Even though a shareholders' agreement may include certain terms from the AoA, it has no specific format i.e., the shareholders' agreement can be as flexible and extensive as required by the shareholders according to their needs. While AoA is a public document, the shareholders' agreement is a private document because it contains confidential internal information of a company. A shareholders' agreement is an affordable option to reduce the risk of possible business disputes because it specifies how decisions must be made regarding certain disputes including the provision of a framework and procedures for dispute resolution.

The AoA and a shareholders' agreement must be complementary to each other. However, a shareholders' agreement may contain a supremacy clause to ensure that it overrides the AoA in case there is any inconsistency so that the shareholders can amend the AoA as required.

Specimen Share-holders Agreement

THIS SHAREHOLDERS AGREEMENT ("**Agreement**") is entered into on this _______ day of _______________ (month), ______________(year) among:

1. **Partners to the Agreement**

   AB Private Limited, a Private Limited Company incorporated under the Companies Act, 2013, having registered office_______________________________________ (hereinafter referred also as the Company) with main object involved in ____ (hereinafter referred also as Company services).

   Partners:

   a) [Partner Name], [address], [Personal or Business ID if any] (hereinafter referred also as [initials])

   b) [Partner Name], [address], [Personal or Business ID if any] (hereinafter referred also as [initials])

   c) [Partner Name], [address], [Personal or Business ID if any] (hereinafter referred also as [initials])

2. **Ownership of the shares**

   The ownership of the shares (total [Number of shares]) is presented in the table below.:

Shareholder	***Number of Shares***	***%***
[Partner Name]		
[Partner Name]		
[Partner Name]		

3. **Background & Rational and the Spirit of this Agreement**

This Shareholders' Agreement defines the co-operation principles between the Partners, and related measures and responsibilities.

The Partners have recognized a growing market opportunity to provide company services to [customer types] [In what markets]. The Partners have agreed upon pursuing this opportunity by their engagement with The Company.

The goal of the Partners is to develop the Company rapidly into [What type of Company is being target; size, scale, etc.]. The initial business outline is presented in the [Annex 1 i.e. company presentation/business plan], and related revenue allocation structure is presented in Exhibit D. The Company develops the plan continuously based on the market feedback and opportunities.

The purpose of this Agreement is to protect the interests of the Partners. It is not meant to punish a Partner who unintentionally breaches this Agreement and discontinues his or her misconduct after notification from other Partners.

In this spirit, the Partners agree not to sell The Company's shares to outsiders when share disposal restriction provisions of this Shareholders' Agreement (hereinafter referred also as Agreement) restrict the selling of the shares.

4. **General Commitments**

The Partners agree to the following:

We, as the Partners to this Agreement, agree to conduct our tasks in the field of The Company's business operations in the interests of the Company. All immaterial and other property rights created during or directly related to The Company business development process will become property of The Company unless agreed otherwise in written by all Partners.

Tasks and/or roles of the Partners :

[Partner] [Role/Title]

Main tasks & responsibilities:

- Manage the business
- Main tasks & responsibilities

5. **Proceedings**

By default, each Partner can freely vote in a shareholders' meeting. However, the Partners agree on two exceptions to the above:

Firstly, if more than 2/3 of the shares owned by the Partners are supporting certain voting behavior, then all Partners will vote in agreement with the 2/3 majority of Partners.

The purpose is to ascertain that the Partners will be unified, acting as a single group, even in the situations when there would be other shareholders in the Company than the Partners alone.

Secondly, certain decisions will require support by Partners holding at least 90% of all Partner shares; otherwise all Partners agree to vote against these decisions. The decisions are the following:

- Increasing and decreasing the share capital,
- Issuing new shares,
- Issuing convertible loans or options that can be transferred to shares,
- Selling all or a major part of the business of the company,
- Authorizing the Board to make decisions listed above.

To implement the proceedings describe above, the Partners agree to efficiently work together at the shareholders' meetings and before them. Any Partner may call the partners to meet in two week's notice, either in person if possible, or over internet/telephone, and otherwise following the protocols used for inviting a shareholders' meeting. The Partners will do their best effort to find meeting times – several meetings if necessary – to work out their common voting strategy. The Partners agree to participate in all shareholders' meetings, either in person or by proxy instructed to follow the proceedings describe above.

6. Competition Restriction Clause

- The Partners who have an active role in the Company undertake not to compete in any way, directly or indirectly, with the business of The Company. Here, the following definitions are used:
  - ✓ Active role in The Company is defined as being either employed by The Company, or acting as a Board director, advisor, or consultant for the company.
  - ✓ The business of The Company is defined based on the strategy, business plans, customer relations and pipeline, product roadmaps, and IPR's of The Company at any given time.
- If a Partner ceases to have an active role in The Company, then the Partner agrees not to compete in any way with the business of The Company as defined at that moment, during the following [number of months i.e. 12].
- In addition to the above, all Partners (not just those having an active role in The Company) agree not to compete in any way with the business of The Company during the first [number of months i.e. 6] after signing this Shareholders Agreement of the company.
- If the Company decides to change its strategy, business plan or business focus, this change and new business plan must be communicated to each Partner. If a competitive situation follows from the change by The Company, this is not considered as a breach of this Competition Restriction Clause.
- If one or several Partners materially breach this Competition Restriction Clause, and do not correct the breach within [number of days i.e. 30] after being notified about the breach by The Company or other Partners having at least 2/3 of the remaining Partner shares, with shares of the Partner(s) breaching the Clause excluded, then following sanction will be applicable.
- The Partner(s) breaching the Competition Restriction Clause agree to sell their shares at a price that is 10% of their fair market price, pro rata of the other Partners' ownerships. In addition, each Partner breaching the Clause agrees to pay [Rs_________________] to The Company.
- This breach shall be documented by the Board and it shall be proven to be harmful (e.g. The Company has lost business or competitive advantage) for The Company.
- The Partners shall be deemed to have provided written consent to each Partner current ownership of and role/appointment in other companies/businesses and other activities as set forth in Exhibition B

and each of the Partner shall not be in breach in relation to any such ownership, role, appointment or activity.

7. **Buy Back Option in normal Partner Exit Situation and Share Disposal Restrictions**

The Partners undertake not to transfer their shares to third parties before [number of months i.e. 36] of signing the shareholders Agreement for the first time, unless otherwise agreed in writing by the Partners holding at least 90% of the shares of the Company. Each Partner shall inform the other Partners about any intent to transfer the Partner's shares, and about the information to be given to third parties in connection with such intent to transfer shares.

The Partners to this Agreement have the right to buy shares back for a period of [number of months ie. 12] from resignation of a Partner, if the buyback has not materialized earlier.

8. **Exit**

In connection with the Liquidation Event, any Net Consideration shall be distributed pro-rata between the shareholders.

9. **Rules Governing Share Disposal**

If any of the Partners, (the "Selling Partner"), negotiates with a third party/Partners ("the Buying Parties") on the transfer of its shares, the Selling Partner undertakes to promptly notify the other Partners in writing ("Tag-Along Notice") about such intent. Other Partners shall have the right, but not the obligation, to require the Selling Partner to cause that, either all, or proportionately the same amount of their shares, as the Selling Partner intends to transfer are purchased by that Buying Party/Partners ("Tag-Along Right") at the same consideration and otherwise on the same terms and conditions obtained by the Selling Party. In such share transfer, the Selling Partner shall make best efforts to find a third Partner to whom all of the shares could be transferred at market price. The other Partners respectively must inform the Selling Partner within [number of days i.e. 30] from the receipt of the Tag-Along Notice whether they wish to use their respective Tag-Along Rights.

In the event that a group of owners holding majority of Company shares ("Majority Holders") have found a candidate ("Third Partner Offeror") who wishes bona fide to purchase all of the shares of the Company, the Majority Holders shall have the right but not the obligation, to require that the other Partners to this Agreement transfer their shares to the Third Partner Offeror ("Drag-Along Right") at the same consideration and otherwise on the same terms and conditions obtained by the Majority Holders. The Drag Along-Right shall be exercised by a notice submitted to the other Partners at least [number of days i.e. 30] before the consummation of the transfer of shares from the Partners to the Third Partner Offeror.

A transfer of shares from a Partner to a third party must always happen simultaneously with the third party becoming also a partner in this Shareholders agreement, and the selling Partner is responsible to see that this happens.

10. **Market Value Determination**

If the shares are to be valued based on provisions of this Agreement, and if the Partners concerned cannot agree on what the market value for the shares will be, the market value shall be determined on the basis of an arms-length third Partner purchase offer for the shares. In the absence of such offer, a respectable financial advisor or investment bank appointed by the Board of Directors shall determine the market value.

11. **Disclaimers and Order of Interpretation**

The Agreement here is understood by all the Partners to contain all relevant questions currently concerning the governance of the Company.

This Agreement supersedes – only for the above-mentioned issues handled within this Agreement– any arrangements, understandings, promises or Agreements made or existing between the Partners hereto, prior to, or simultaneously with the Agreement and constitutes the entire understanding between the Partners hereto.

If this Agreement, related Agreements and documents or the Articles of Association are inconsistent with each other, the documents shall be interpreted in the following order:

1. this Agreement;
2. other Agreements or documents signed between the Partners;
3. the Articles of Association of the Company.

If the Partners decide to modify this Agreement it has to be done in writing and signed by and on behalf of all Parties. In that Agreement there must be a clause mentioning that this is a modification to the existing shareholders Agreement or the modification must be otherwise evident by the circumstances.

12. Other Shareholder Agreements

The Partners understand and are aware that some of the Partners have existing shareholder agreements or competition restriction clauses in other companies. These agreements restrict competition. The Partners agree to make their best effort to avoid conflicts with these other shareholder agreements and competition restrictions. The Partners agree that if any Partner encounters liabilities from these agreements or restrictions, the Company will cover those liabilities, including but not limited to compensation payments and legal costs. The Board shall make the final decision, to what extent the Company covers the costs.

13. Insight and confidentiality

The Partners shall hold in confidence and shall not disclose to any third Partner without prior written consent of all the Partners the material contents of this Agreement unless disclosure is required by law, regulation, stock exchange rules or order of a court of competent jurisdiction.

The Partner under an obligation to make a disclosure as defined hereinabove shall use its best efforts to notify other Partners before making the disclosure.

The Partners shall not at any time hereafter disclose or communicate to any person (other than, where relevant, to their officers, employees or professional advisors, whose position makes it necessary to know the same) any confidential information concerning the business, accounts, financial or contractual arrangements or other dealings, transactions or affairs of the Company or any of its subsidiaries which may be within or which may come to its knowledge save for;

a) such information that at the time of disclosure is public knowledge,

b) when disclosure is required by law, regulation, stock exchange rules, or order of a court of a competent jurisdiction.

Any Partner wishing to disclose confidential information to a prospective transferee of shares and to their representatives and advisers shall first obtain an appropriate commitment as to confidentiality before making the disclosure.

14. Communication among Partners to the Agreement

Any communication between the Partners concerning this Agreement will be in writing and will be delivered in person or by e-mail in such a way that the recipient confirms having received the information, or sent by registered mail and fully prepaid in an envelope properly addressed to the address given by the Partner to the Company or to other Partners. Any such notice will be in the English language and will be considered to have been given at the time when actually delivered and confirmed by all Partners or in any other event between [number of days i.e. 14] after it was mailed in the manner herein before provided.

15. Costs

Each of the Partners hereto will bear his/her or its own legal, accountancy and other costs, charges and expenses connected with the negotiation, preparation and implementation of this Agreement and any other Agreement incidental to or referred to in this Agreement.

16. Assign Ability

This Agreement cannot be assigned by any one of the Partners without the prior written consent of the other Parties.

17. Disputes and Governing Law

This Agreement will be governed by and constructed in accordance with the laws of [Country]. Any disputes arising out of this agreement shall be resolved in the [District Court or other] of [City, Country].

18. Term

This Agreement becomes effective upon the signature by all Partners and shall be binding on each Partner as long as that Partner is the owner of the Shares or other Equity Securities. This Agreement shall, however, be terminated upon the consummation of a Trade Sale or an IPO.

Notwithstanding the aforesaid, Sections 7 - 9 (Competition Restriction Clause, Buy Back Option in normal Partner Exit Situation and Share Disposal Restrictions, and Rules Governing Share Disposal) and Sections 17 (Disputes And Governing Law) will be binding, to the extent applicable, upon the Party even if the Party has ceased to be a Party to this Agreement.

19. Ancillary Provisions and Signature

Except as otherwise provided herein, no addition, amendment to or modification of this Agreement will be effective, unless it is made in writing and signed by and on behalf of all Parties.

There will be no waiver of any term, provision or condition of this Agreement unless such waiver is evidenced in writing and signed by the waiving Parties.

No omission or delay on the part of any Partner hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or Partial exercise of any such right, power or privilege preclude any other. The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

In the event that any of these terms, conditions or provisions will be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision will be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

This Agreement in has been executed in [number of copies] identical originals, and reviewed completely by the Parties, signed after approval and all pages in appendixes inclusive initialed by the Parties. The Company has received one and each Partner has received one original bearing the following legally binding signatures.

This Agreement contains the entire agreement and understanding of the parties hereto relating to the subject matter hereof, and merges and supersedes all prior and contemporaneous discussions, agreements and understandings of every nature between the parties hereto.

This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

[Partner & title/role]	[Partner & title/role]	[Partner & title/role]

By: ______________________

Name:

Title:

Address:

Authorised Signatory

SELLER:

By: ______________________

Name:

Title:

Address:

(Note: Assumptions have been taken in the above specimen, terms and conditions may be drafted in accordance with the requirements)

Source: https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/Tools_templates/internal_templates/startup_founders_sha_sample.pdf

Underwriting and Brokerage Agreements

Underwriting is one of the most important functions in the financial world wherein an individual or an institution undertakes the risk associated with a venture, an investment, or a loan in lieu of a premium. Underwriters are found in banking, insurance, and stock markets.

The nomenclature ‘underwriting’ came about from the practice of having risk takers to write their name below the total risk that she/he undertakes in return for a specified premium in the early stages of the industrial revolution.

In the securities market, underwriting involves determining the risk and price of a particular security. It is a process seen most commonly during initial public offerings, wherein investment banks first buy or underwrite the securities of the issuing entity and then sell them in the market. This ensures that the issuers of the security can raise the full amount of capital while earning the underwriters a premium in return for the service.

Investors benefit a lot from the underwriting process as the information provided by an underwriting agency can help them take a more informed buying decision. An underwriter who holds a large chunk of the securities of a particular company or is the market maker for such a security provides the core liquidity for the security and enhances price stability and distribution.

Underwriters in the banking sector perform the critical operation of appraising the credit worthiness of a potential customer and whether or not to offer it a loan. They appraise the credit history of the customer through their past financial record, statements, and value of collaterals provided, among other parameters.

In the insurance world, underwriters determine whether an insurance agency should undertake the risk of insuring a client. They determine the risk and exposure of clients and also how much insurance should be granted to a client, how much they should pay for it and whether or not to offer an insurance policy to the client in the first place.

The Underwriting Agreement sets forth the terms and conditions pursuant to which the underwriters will purchase the offered securities and distribute them to the public. Both the issuer's and underwriters' legal counsel play critical roles in negotiating key provisions of the underwriting agreement that have significant effects on the offering.

Specimen Underwriting Agreement

Name and address of the firm of brokers

who agree to act as underwriters.

(Letter form)

Ref. No_______________ Date____________________

The Board of Directors

(Name and address of the company for
whose public issue the firm agrees to
act as underwriter)

Dear Sir(s),

Re: Proposed Public Issue of Equity Shares

We, hereby record the terms on which we (hereinafter referred as "underwriters") have agreed to underwrite_____________ Equity Shares of the aggregate nominal value of Rs _____________ out of the total issue of ______________ Equity Shares to be offered to the public at Rs ______/- each for cash at par.

1. The prospectus as approved by the underwriters will be delivered to the Registrar of Companies __________________ on or before ___________________ for registration in accordance with the provisions of the Companies Act, 2013.
2. Sufficient number of copies of the prospectus and application forms shall be printed and made available to the underwriters, brokers and members of the public who intend to apply for the Equity Shares as soon as possible thereafter.
3. Underwriters shall be entitled to arrange sub-underwriting with respect to their respective commitments for their own account on terms to be arranged at their discretion with their sub-underwriters.
4. If by the closing date of the subscription list or such earlier date as may be agreed to by the underwriters, the Equity Shares offered to the public are not subscribed in full by the public and the application money payable in respect thereto is not received by you, you will within 14 days or such extended time as may be agreed to by the underwriters, notify the underwriters in writing as to the amount/number of Equity Shares which have not been so subscribed. The underwriters shall within 21 days after the receipt of such intimation apply for and subscribe such unsubscribed amount/number of Equity Shares and pay or procure to be paid the money payable on application in respect of such Equity Shares in proportion that the amount underwritten by each of them bears to the total amount of the issue.
5. In determining the amount/number of Equity Shares to be taken up by the underwriters the following factors shall be taken into consideration:
   (a) In no circumstances will the underwriters be liable to take up Equity Shares more than the amount underwritten by them.

(b) All applications made before the closing of the subscription list by the underwriters, or on forms of application bearing the stamp of the underwriters, and not withdrawn in the meantime shall be considered in pro tanto reduction of the liability of the underwriters under this underwriting agreement.

(c) After scrutiny of the applications received, the total shortfall shall first be allocated among all persons who have underwritten the issue and who have not fulfilled their quota, in proportion to the amount underwritten by each of them.

(d) Credit shall be given to each underwriter who has not fulfilled his quota in relation to applications made by members of the public independently proportionately to the amount underwritten by each under writer, any amount or such credit being in excess of the commitment of any underwriter being similarly shared proportionately by the others.

6. Subject to the terms of the prospectus, you will allot Equity Shares for which applications have been received as soon as possible and despatch Equity Share Certificates within six months of such allotment.

7. In consideration of the underwriting you will, within 14 days from the date on which we shall have fulfilled our obligation, pay the underwriters a commission at the rate of two and a half per cent on the issue of the amount/ number of Equity Shares underwritten by the underwriters.

8. Our offer is valid subject to your subscription list opening on or before____________________.

Please acknowledge receipt of this letter and intimate to us your acceptance of the terms and conditions mentioned above.

Thanking you,

Yours faithfully,

For________________________

COLLECTIVE DECISION MAKING PROCESS IN COMPANIES- "RESOLUTION"

Resolution as per Cambridge Dictionary means "an official decision that is made after a group or organization has voted".

It is a decision or agreement made by the directors and shareholders of the company. When a resolution is proposed it is called motion. After passing a resolution company is bound to act according to it.

A company is an artificial judicial person created by law having its own distinct entity form and capable of entering into contracts. Though company is bestowed with the characteristic of separate legal entity but it cannot take decision on its own. It is capable of acting in its own name, entering into contracts. It is capable of owning and holding property in its own name, sue others and to be sued by others in its name. Despite all these powers, since it is not a natural person, it expresses its will or takes its decisions through natural persons (i.e. directors or members) collectively which is known as "resolutions."

There are two collective bodies in the company which take decision through resolutions:

(i) Board of Directors – who manage, control and direct the business of the company (A document in writing created by Board of Directors certifying a binding corporate action is called a Resolution), and

(ii) General body of members – who ultimately own the company.

Types of Resolutions

Board Resolution: Any important decisions taken by the Board of Directors of the Company in Board Meeting and in writing is known as Board Resolution. It's a Formal and a Legal document binding on the Company.

Ordinary Resolution: According to Section 114(1) of the Companies Act, 2013, a resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting.

Broadly, Ordinary Resolutions are required to be passed by simple majority.

Special Resolution: According to Section 114(2) of the Companies Act, 2013, a resolution shall be a special resolution when—

(a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

(b) the notice required under this Act has been duly given; and

(c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Thus, Special Resolutions are required to be passed by three–fourth (3/4th) majority.

Unanimous Resolution- It requires the approval of all the members present and voting without a single vote cast against it.

Passing of Resolution by Circulation-As per Section 175(1) of the Companies Act, 2013, a Company may pass resolution through circulation. The said resolution may be circulated in draft, together with necessary papers, if any, to all the directors or members of the Committee at their address registered with the Company in India by hand delivery or courier/ post or through e-mail/fax. The same must be approved by majority of directors or members, who are entitled to vote on the resolution.

A resolution passed through circulation shall be noted at a subsequent meeting and made part of minutes of such meeting.

Further, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

Practical aspects on drafting of Resolution

All resolutions, no matter how simple they are, should be drafted in clear and distinct terms since resolutions embody the decisions of the meetings. The following points should be remembered while drafting resolutions, both for Board and general meetings:

(a) All essential facts are to be included in the resolution.

(b) Surplus and meaningless words or phrases should not be included in resolutions.

(c) Reference to documents approved at a meeting should be clearly identified, e.g., the re-appointment of a managing director should indicate that such appointment is on the terms and conditions contained in the draft agreement, a copy of which was placed before the meeting and initialed by the chairman for the purpose of identification.

(d) Resolutions must indicate the relevant provisions or sections of the Act and the Rules pursuant to which they are being passed.

(e) If a resolution is one which requires the approval of the Central Government or confirmation of the National Company Law Tribunal/Court, this must be stated in the resolution.

(f) A resolution must indicate when it will become effective.

(g) A resolution must confine itself to one subject matter and two distinct matters should not be covered in one resolution.

(h) A resolution should be crisp, concise and precise and should be flexible enough to take care of eventualities.

(i) Where lengthy resolutions have to be approved, they should be divided into paragraphs and should be arranged in their logical order having regard to the subject matter of the resolution.

(j) A resolution must be so drafted that anybody not present at the meeting or anybody referring to it at a later date will know clearly what the decision was at that meeting without referring to any other document.

How to draft a resolution?

- Resolutions are written within quotes.
- Resolutions begin with "**RESOLVED THAT** ______________.
- Mention the sections of Companies Act 2013, rules made thereunder or provisions of any other law pursuant to which decision is made. E.g. RESOLVED THAT pursuant to the provisions of section 161 of the Companies Act, 2013 and rules there under, and other applicable provisions of law for the time being in force,______________________________.
- If resolution further requires approval of Central Govt. or general meeting or any other authority, it shall specifically specify the authority whose approval is required e.g. RESOLVED THAT subject to approval of Central Govt under section ____________ of Companies Act 2013 or rules made thereunder or any other law for the time being in force, _________________.
- In case of resolution passed at general meeting, it shall be specifically mentioned in the notice convening the meeting that whether it is Ordinary resolution or Special resolution.
- For filing forms with RoC and other authorities, authorize a person e.g. FURTHER RESOLVED THAT Mr___________________, director (DIN..) is authorized to execute, sign and do all other acts and deeds as may be required to give effect to this resolution.

Specimen Resolutions

(i) Board Resolution for Appointment of Managing Director

"**RESOLVED THAT** pursuant to the provisions of section 196, 197, 203, Schedule V of the Companies Act, 2013, Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, Regulation 17 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 and any other applicable provisions of any law and subject to Articles of Association of the Company and approval of shareholders of the company at the ensuing general meeting of the company , the consent of the board be and is hereby accorded for the appointment of Mr........................ as Managing Director/ Whole time Director of the Company w.e.f. .... at monthly remuneration and other terms and conditions as may be finalized by Directors of the Company.

RESOLVED FURTHER THAT the terms and conditions of the appointment shall be as per the appointment letter including its revision from time to time.

RESOLVED FURTHER THAT Mr./Ms. .... of the company, be and is hereby authorised to file necessary forms with the Registrar of Companies.

RESOLVED FURTHER THAT Mr./Ms. ....of the company be and is hereby authorised to make necessary entries in the respective registers and records of the company.

RESOLVED FURTHER THAT Mr./Ms. ....be and is hereby authorised to all other acts, things and deeds as may be necessary or incidental for giving effect to this resolution."

(ii) Shareholders' Resolution for Re-Appointment of Managing Director

"RESOLVED THAT pursuant to the provisions of section 196, 197, 203, Schedule V of the Companies Act, 2013, Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, Regulation 17 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and any other applicable provisions of any law and subject to the approval of Central Government or other Government authority/ agency/board, if any, the consent of the Members be and is hereby accorded to re-appoint .... as Managing Director of the Company for a period of 5 Years with effect from .... upon the terms and conditions provided in the Explanatory Statement annexed to the Notice of this meeting".

RESOLVED FURTHER THAT the Board be and is hereby authorized, to do all acts, things and deeds as may be necessary or incidental, for obtaining approvals - statutory, contractual or otherwise, relating to the above and for giving effect to this resolution."

Explanatory Statement:

Based on the recommendation of Nomination and Remuneration Committee duly approved by the resolution passed at its meeting, the Board of Directors has appointed Mr............ as the Managing Director of the Company for a period of 5 (Five) years w.e.f. .....20..., subject to approval of the members in General Meeting upon terms and conditions set out in the draft agreement to be entered into by the Company with him as approved by the Board of Directors.

Mr............'s visionary guidance has been instrumental in driving company's remarkable growth. Throughout his tenure, including the challenging times presented by the COVID-19 pandemic, he has exhibited exceptional leadership skills and a steadfast commitment towards Company's progress. Under his astute leadership, the Company has achieved steady growth, marked by consistent expansion, strategic initiatives, and a relentless pursuit of excellence. His ability to navigate through uncertainties and make well-informed decisions has ensured the sustainability of Company's operations. It would be therefore in the interest of the Company to re-appoint Mr............as Managing Director of the Company.

The material terms and conditions of the said draft Agreement are as under:

Period of Agreement:

Remuneration:

Basic Salary:

Perquisite:

Reimbursement:

Insurance:

Mr............is interested in the said resolution as it pertains to his own re-appointment. Mr............is deemed to be interested in the said resolution as he is related to Mr............

Prescribed details of Mr............is provided in the notes to the Notice. The other relatives of Mr............

may be deemed to be interested in the said resolution at Item No. ..... of the Notice to the extent of their shareholding, if any, in the Company.

None of the other Directors, Key Managerial Personnels of the Company and their relatives are, in any way, concerned or interested, financially, or otherwise, in the said resolution.

(iii) Board Resolutions for Appointment of Chief Financial Officer (CFO)

"RESOLVED THAT pursuant to the provisions of section 203 of the Companies Act, 2013 and Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and any other applicable provisions, the consent of the board be and is hereby accorded for the appointment of Mr......................... as Chief Financial officer of the Company w.e.f. .... at monthly remuneration and other terms and conditions as may be finalized by Directors of the Company**.**

RESOLVED FURTHER THAT the terms and conditions of the appointment shall be as per the appointment letter including its revision from time to time.

RESOLVED FURTHER THAT Mr/Ms ....of the company, be and is hereby authorised to file necessary forms with the Registrar of Companies.

RESOLVED FURTHER THAT Mr./Ms.....................of the company be and is hereby authorised to make necessary entries in the respective registers and records of the company.

RESOLVED FURTHER THAT M/s Company Secretaries/Chartered Accountant/Cost Accountant, having office at .... be and is hereby authorized to certify and file the necessary forms and return with Registrar of Companies....................................

RESOLVED FURTHER THAT Mr. .... be and is hereby authorised to all other acts, things and deeds as may be necessary or incidental for giving effect to this resolution."

(iv) Board Resolutions for Appointment of Whole-Time Company Secretary of the Company

"RESOLVED THAT pursuant to the provisions of Section 203 of the Companies Act, 2013 read with Rule 8 and 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and other applicable provisions, if any, of the Companies Act, 2013, as amended or re-enacted from time to time, the consent of the board of directors of the company be and is hereby accorded for the appointment of Mr./Ms. .... Associate/Fellow member of Institute of Companies Secretaries of India, having Membership No: ...., who possesses the requisite qualification and being eligible for appointment, w.e.f. .... at such remuneration and other terms and conditions as may be finalized by Directors of the Company.

RESOLVED FURTHER THAT the terms and conditions of the appointment shall be as per the appointment letter including its revision from time to time.

RESOLVED FURTHER THAT Mr./Ms .... of the company, be and is hereby authorised to file necessary forms with the Registrar of Companies.

RESOLVED FURTHER THAT Mr./Ms.....................of the company be and is hereby authorised to make necessary entries in the respective registers and records of the company

RESOLVED FURTHER THAT M/s Company Secretaries/Chartered Accountant/Cost Accountant, having office at .... be and is hereby authorized to certify and file the necessary forms and return with Registrar of Companies....................................

RESOLVED FURTHER THAT Mr. .... be and is hereby authorised to all other acts, things and deeds as may be necessary or incidental for giving effect to this resolution."

CONSENT LETTER OF COMPANY SECRETARY

Date: ……………………

The Board of Directors

……………………………… Private Limited/Limited

Sir,

Sub: Consent to act as Company Secretary of ………………… Private Limited/ Limited

I……………………………… S/o/D/o Sh…………………… R/o …………………………………… … a …………… (Fellow/Associate) member of the Institute of Company Secretaries of India having membership number ……………, give my consent to act as company secretary of ………………………Private Limited/Limited" w.e.f. ……………………… and declare that I am not disqualified to act as such.

Thanking you.

Yours faithfully

M. No……………………

ECSIN: ……………………

Date:

Place:

(v) Board Resolution for Approval of Annual Financial Statement of the Company for the financial year ended 31st March ……………

"**RESOLVED THAT** pursuant to the provisions of Section 134 and Section 137 of the Companies Act, 2013 and any other applicable provisions of Companies Act, 2013 read with Rules thereunder (including any statutory modifications or re-enactment thereof, for the time being in force), the balance sheet as at March 31, 20……, and statement of profit and loss ending on that date along with the Cash Flow Statement as at 31 March, 20………… together with the Schedules and Notes to Accounts thereon as required under Schedule III of the Companies Act, 2013, as placed before the Board and initialed by the Chairperson for the purpose of identification be and are hereby considered and approved.

RESOLVED FURTHER THAT Mr. ………… and Mr. …………, Directors of the Company and Mr……………, Company Secretary, be and are hereby authorized on behalf of the Board of Directors to sign the Audited Annual Financial Statements of the Company for the financial year ended 31st March, ………… and thereafter the same be forwarded to the Statutory Auditors of the Company for their report thereon."

(vi) Ordinary Resolution passed by the members of the Company for adoption of the Directors' Report and the Audited Balance Sheet of the Company as on 31st March ………..and the Statement of Profit & Loss for the year ended 31st March………. with the Auditors Report thereon

"**RESOLVED THAT** the audited financial statements for the year ended 31st March ……………comprising Balance Sheet as at 31st March, ……………, the Statement of Profit & Loss for the year ended 31st March……………, and Cash Flow Statement for the year ended 31st March ……………, including the Consolidated Financial Statements of the Company and its subsidiaries, along with Notes thereto, and the Auditor's Reports thereon, as well as the Director's Report along with its Annexures including the CSR & Sustainable Development Report, Management Discussion and Analysis Report, and Corporate Governance Report, as circulated and as laid before the meeting, be and are hereby approved and adopted."

(vii) Board Resolution for Declaration of Interim Dividend on Equity Shares

"RESOLVED THAT pursuant to the provisions of section 123(3) and other applicable provisions, if any, of the Companies Act, 2013 ("Act"), (including any statutory modification(s) or re- enactment thereof, from time to time), consent of the Board of Directors of the Company be and is hereby accorded to declare an Interim Dividend of Rs. .... at the rate of ...... percent) on fully paid-up equity share of Rs. .... (In words) of the Company amounting to Rs. .... (In words) be paid out of the profits of the Company for the financial year/quarter ended on (date of closures of FY/Quarter) or out of the surplus available till the FY/Quarter ended on (date of closures of FY/Quarter) to those Members of the Company whose names would appear on the Register of Members/List of Beneficial Owners maintained by the Depositories as on the (Date) being the Record date for payment of Interim Dividend.

RESOLVED FURTHER THAT a separate bank account be opened in the name of the Company with .... Bank at its Branch at .... and a sum of Rs...................................(In words), being the total Interim Dividend amount, be deposited in the said account.

RESOLVED FURTHER THAT Mr..................................., Director and Mr. ...., Company Secretary of the Company be and are hereby jointly/ severally authorised to open a bank account by signing the account opening form and by furnishing to the said bank the required papers, documents and information and completing all other required formalities for the purpose of opening the said bank account and to make arrangements with the said bank for the payment of the Interim Dividend.

RESOLVED FURTHER THAT Mr ...., Director and Mr ...., Company Secretary of the Company, be and are hereby jointly/severally authorised to sign the Dividend warrants to be issued on the said bank and the said bank be and is hereby authorised to honour the Interim Dividend warrants jointly/severally signed by the said authorised signatories, as and when presented for encashment."

(viii) Board Resolution Recommending Payment of Dividend on Equity Shares out of Profits

"**RESOLVED THAT** pursuant to the provisions of section 123 and the rules made thereunder and other applicable provisions, if any, of the Companies Act, 2013 ("Act"), (including any statutory modification(s) or re-enactment thereof, from time to time), and subjects to the approval of the members of the company, consent of the Board of Directors of the Company be and is hereby accorded to recommend a Dividend of Rs......................(at the rate of ...... percent) on each fully paid-up equity share of Rs .... (In words) of the Company amounting to Rs. .... (In words) be paid out of the profits of the Company for the financial year ended on (date of closures of FY) or out of the free reserves available till the FY ended on (date of closures of FY) to those Members of the Company whose names would appear on the Register of Members/List of Beneficial Owners maintained by the Depositories as on the (Date) being the Record date for payment of Dividend.

RESOLVED FURTHER THAT a separate bank account be opened in the name of the Company with .... Bank at its Branch at ....and a sum of Rs. .... (In words), being the total Dividend amount, be deposited in the said account.

RESOLVED FURTHER THAT Mr ...., Director and Mr ...., Company Secretary of the Company be and are hereby jointly/ severally authorised to open a bank account by signing the account opening form and by furnishing to the said bank the required papers, documents and information and completing all other required formalities for the purpose of opening the said bank account and to make arrangements with the said bank for the payment of the Dividend.

RESOLVED FURTHER THAT Mr............................., Director and Mr. ...., Company Secretary of the company, be and are hereby jointly/ severally authorised to sign the Dividend warrants to be issued on the said bank and the said bank be and is hereby authorised to honour the Dividend warrants jointly/ severally signed by the said authorised signatories, as and when presented for encashment."

(ix) Ordinary Resolution for Declaration of Dividend by Members at an AGM

"RESOLVED THAT a Dividend of Rs. ……/- (at the rate of …… percent) per equity share of Rs. ……/- each fully paid up, of the Company, be and is hereby declared for the financial year ended 31st March …… and that the same be paid as recommended by the Board of Directors, out of the profits of the Company for the financial year ended 31st March ……."

(x) Board Resolution for Approval for Filing of Form CSR -1

1A. In cases where Implementing Agency is a corporate entity

"RESOLVED THAT pursuant to section 135 of the Companies Act, 2013 read with rule 4(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time, the approval of the Board of Directors of the [name of the section 8 company], be and is hereby accorded for filing e-form CSR-1 on behalf of the company on the portal of the Ministry of Corporate Affairs, Government of India.

RESOLVED FURTHER THAT Board of Directors of [name of the section 8 company], do hereby take on record the valid registration certificates granted under section 12A and section 80G of the Income Tax Act, 1961 for the purposes of receiving CSR funds and for filing of e-form CSR-1.

RESOLVED FURTHER THAT Board of Directors of the [name of the section 8 company], be and are hereby authorized severally to take necessary steps to give effect to the above resolution and do all such acts, deeds and things as may be required to ensure filing of e-form CSR-1."

1B. In cases where Implementing Agency is a Non-Corporate entity

"**RESOLVED THAT** in accordance with the requirements of the section 135 of the Companies Act, 2013 and the relevant rules thereunder as applicable to the Trust/Association, application be made in Form No.CSR-1 with the Ministry of Corporate Affairs, Government of India, for registration of the [name of the entity] and that any one of the Trustees be and are hereby authorized to finalise the application, file the same on MCA portal and to attend to all matters incidental thereto.

RESOLVED FURTHER THAT Board of Trustees/Governor of the {name of the entity} do hereby take on record the valid registration certificates granted under section 12A and section 80G of the Income Tax Act, 1961 for the purposes of receiving CSR funds and for filing e-form CSR-1."

(xi) Board Resolution to approve amendment to the existing CSR policy

"RESOLVED THAT pursuant to section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and such other provisions as may be applicable, the Board of Directors of the company do and hereby approve amendments to the existing CSR Policy as recommended by the CSR Committee of the Board.

RESOLVED FURTHER THAT the amended CSR Policy, be and is hereby approved, signed by Mr./Ms. …………, Director.

RESOLVED FURTHER THAT the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required to ensure compliance of the CSR Policy including disseminating the contents of revised policy on the website of the company."

(xii) Board Resolution for Approval and Adoption of CSR Policy

"RESOLVED THAT pursuant to section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and such other provisions as may be applicable and based on the recommendation of the CSR committee, the Board of Directors of the company do and hereby approve a new CSR Policy in suppression of the existing CSR Policy dated ……… in compliance with the requirements under the Companies (Corporate Social Responsibility Policy) Rules, 2014.

RESOLVED FURTHER THAT the new CSR Policy be and is hereby approved and signed by Mr./Ms. ………., Director.

RESOLVED FURTHER THAT the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required to ensure compliance of the CSR Policy including disseminating the contents of revised policy on the website of the company."

(xiii) Board resolution to consider and approve the shareholder's agreement for controlling the composition of the board of directors of Company

"RESOLVED THAT pursuant to the applicable provisions of the Companies Act, 2013 read with the rules made thereunder including any amendment thereto or re-enactment thereof, for the time being in force, and other applicable laws, if any, and pursuant to the Articles of Association and Memorandum of Association of the Company and subject to the approval of the shareholders at the ensuing general meeting, consent of the board be and is hereby accorded to execute the shareholder's agreement pursuant to which ……….. Limited shall become a subsidiary of the Company.

RESOLVED FURTHER THAT Mr/Ms………..., [DIN] and Mr/Ms ………….[DIN], directors of the Company are hereby severally authorized to execute all such documents, instruments and writings as may be required and to take all such steps and actions and give such directions as may in its absolute discretion deem necessary and to settle any question that may arise in this regard for the purpose of giving effect to the aforesaid resolution."

(xiv) Board resolution authorisation to make Investments, give Loans, Guarantees and provide Securities under Section 186 of the Companies Act, 2013

"**RESOLVED THAT** pursuant to the provisions of section 186 and all other applicable provisions, if any, of the Companies Act, 2013 and Companies (Meeting of Board and its Powers) Rules, 2014, (including any Statutory modification or re-enactment thereof, for the time being in force), consent of the members of the company be and is hereby accorded to the Board of Directors of the company (Hereinafter referred to as "Board" which term shall include any committee constituted by the Board or any person(s) authorized by the Board to exercise the power conferred on the Board by this resolution) to make loans or investments, in one or more trenches by subscription, purchase or otherwise in subsidiary(ies)/ any body/ bodies Corporate in India or abroad (existing or which may be promoted/ incorporated), in any kind of securities, or by providing of guarantee or security in connection with a loan made by any other person to any subsidiary(ies)/ any body/ Body corporate in India or abroad (existing or which may be promoted or incorporated) in excess of limit prescribed in section 186 of Companies Act, 2013 but subject to a maximum limit of Rs.1000 Crore (Rupees One Thousand Crore Only).

RESOLVED FURTHER THAT Board be and is hereby authorised to negotiate and finalize the terms and conditions of the said investments, loan, guarantees and provision of security on behalf of the Company as it may deem fit in the interest of the Company, to take all such actions and to settle all matters arising out of and incidental thereto, and to sign and execute all deeds, applications, documents and such investments, loan, guarantees and provisions of security and generally to do all such acts, deeds and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to this resolution."

(xv) Shareholders special resolution along with explanatory statement authorising to make investment in the shares of the .... Limited (where the limits u/s 186 are exceeded)

"**RESOLVED THAT** pursuant to the provisions of section 186 (3) the Companies Act, 2013 read with the rules made thereunder (including any statutory modifications or re-enactment thereof for the time being in force), the consent of shareholders of the Company be and is hereby accorded to the Board of Directors including any Committee of Directors to make investment in the shares of .... Limited for upto an amount of [*] (in words) which is in excess of the current limits of the Company under section 186.

RESOLVED FURTHER THAT for the purpose of giving effect to this resolution, the Board of Directors of the Company be and is hereby authorized to execute all such documents, instruments and writings as may be required and to take all such steps and actions and give such directions as may in its absolute discretion deem necessary and to settle any question that may arise in this regard."

Explanatory Statement

The members are informed that currently the Company's investment limits under section 186 (3) of the Companies Act, 2013 is [*] (in words). The management proposes to make investment of upto INR [*] (in words) in the equity shares of .... Limited which is one of its subsidiary and post the further investment, the stake of the Company in .... Limited will increase from [*%] to [*%]. The said subsidiary is into the business of [*] which requires capital infusion at the given stage and thus, the current investment is being proposed.

The Board of directors in their meeting held on [*] have approved the said investment and have recommended to the members to consider and approve the same as a Special resolution.

None of the Directors or KMPs and their relatives are concerned or interested in the said resolution other than in their capacity as a member of the Company.

(xvi) Board Resolution for Conversion of Company into Private Limited Company

"**RESOLVED THAT** pursuant to the provisions of section 13, 14 and any other applicable provisions of the Companies Act, 2013 read with the Rules made thereunder (including any amendment thereto or re-enactment thereof, for the time being in force), if any, and subject to the approval of the shareholders at the ensuing general meeting and subject to the approval of the Regional Director .... Region, the consent of the board of directors of the Company be and is hereby accorded to convert the Company from 'Public Limited' to 'Private Limited' and consequently the name of the company be changed from "........................ LIMITED" to "........................ PRIVATE LIMITED" by inserting the word 'Private' before the word 'Limited'.

RESOLVED FURTHER THAT Mr/Ms............, [DIN] and Mr/Ms ....[DIN], directors of the Company are hereby severally authorized to execute all such documents, instruments and writings as may be required and to take all such steps and actions and give such directions as may in its absolute discretion deem necessary and to settle any question that may arise in this regard for the purpose of giving effect to the aforesaid resolution."

(xvii) Special Resolution along with explanatory statement for Conversion of Company into Private Limited Company

"**RESOLVED THAT** pursuant to the provisions of section 13, 14 and any other applicable provisions of the Companies Act, 2013, if any and subject to the approval of the Regional Director .... Region, the consent of the shareholders of the Company be and is hereby given to convert the Company from ‘Public Limited’ to ‘Private Limited’ and consequently the name of the company be changed from “......................... LIMITED” to “......................... PRIVATE LIMITED” by inserting the word ‘Private’ before the word ‘Limited’.

RESOLVED FURTHER THAT for the purpose of giving effect to this resolution, the Board of Directors of the Company be and is hereby authorized to execute all such documents, instruments and writings as may be required and to take all such steps and actions and give such directions as may in its absolute discretion deem necessary and to settle any question that may arise in this regard.

RESOLVED FURTHER THAT any of the Directors be and are hereby severally authorized to do all such acts, deeds and things as may be necessary or expedient to give effect to this resolution.”

Explanatory Statement:

Item No. 1

As the members are aware that the Company was originally incorporated on .... as a public limited company. The Board of directors considered that since ...., it would be appropriate to convert the Company into a Private Limited Company.

As per the provisions of the Companies Act, 2013, the consent of the members by way of special resolution is required for conversion of the Company to a private limited company. The Members are requested to note that the amendment is subject to the approval granted by the Registrar of Companies, ..., Ministry of Corporate Affairs and such other regulatory authorities, as may be required.

None of the Directors or KMPs and their relatives are concerned or interested in the said resolution other than in their capacity as a member of the Company.

(xviii) Board Resolution for shifting of registered office from............ To...........

“RESOLVED THAT pursuant to the provisions of Section 12 of the Companies Act, 2013, read with Rule 25 and 27 of the Companies (Incorporation) Rules, 2014, the consent of Board of Directors be and is hereby accorded for shifting the Registered office address of the Company from the existing premises at .... to ...., with immediate effect.

RESOLVED FURTHER THAT the Lease Deed/Rent Agreement dated .... executed by the company with ....in respect of the proposed new registered office address be and is hereby noted.

RESOLVED FURTHER THAT all Directors of the company be and are hereby severally authorized for and on behalf of the Company to do or cause to do such acts, deeds and things as may be considered necessary in connection with or incidental to the above.”

(xix) Board Resolution To Borrow the money in excess of paid-up capital, free reserves and securities premium account under section 180(1)(c) of the Companies Act, 2013

“RESOLVED THAT pursuant to the provisions of Section 180(1)(c) and other applicable provisions of the companies Act 2013 and subject to the consent of the shareholders by way of special resolutions, the consent of the board be and is hereby given to borrow money up to .... (with or without Security) where the moneys if already borrowed by the company (apart from temporary loan obtained or to be obtained from the company’s Banker in the ordinary course of its business),may exceed the aggregate of the paid-up capital of the company, its free reserves and securities premium account (reserves not set apart for any specific purpose),subject to condition that the total amount of money/moneys so borrowed by the Board shall not at any time exceed the limit of INR ....

RESOLVED FURTHER THAT Mr./Ms. .... of the company, be and is hereby authorised to do all other acts, deeds and things necessary to give effect to the said resolution.

RESOLVED FURTHER THAT M/s .... Company Secretary having office at ....be and is hereby authorised to certify and file the necessary forms and return with registrar of companies."

(xx) Audit Committee Resolution for Omnibus Approval of Related Party Transactions for the Financial Year ....

"RESOLVED THAT pursuant to the provisions of Section 177(4)(iv), Section 188(1) of the Companies Act, 2013 read with Rule 6A of the Companies (Meetings of Board and its Powers) Rules, 2014 and in terms of Regulation 23(3) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, the omnibus consent, sanction, permission or approval, as the case may be, of the members *(independent directors only)* of the Audit Committee, be and is hereby granted to the proposed transactions, as placed on the table, to be entered/executed during the financial year ...., with the related parties as defined under Section 2(76) of the Companies Act, 2013 as well as Indian Accounting Standard-24 (Ind AS-24) prescribed by the Institute of Chartered Accountants of India and notified under Section 133 of the Companies Act, 2013.

RESOLVED FURTHER THAT the details of related party transactions entered into pursuant to the omnibus approval granted by way of this resolution, shall be placed before the Audit Committee, for its review and noting on a quarterly interval basis.

RESOLVED FURTHER THAT Managing Director and Chief Financial Officer of the Company, be and are hereby severally authorised to do all acts, deeds and things as may be necessary to give effect to this resolution."

LESSON ROUND-UP

- Amalgamation means merging of two corporations, destroying both in the process and creating an entirely new entity i.e. a new financial organization.
- A mortgage meaning in simple words is a transaction between two people: a borrower and the lender. Section 58 of the Transfer of Property Act, 1882 defines Mortgage as the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.
- Debenture Trust deed is a written instrument legally conveying property to a trustee often for the purpose of securing a loan or mortgage. It is the document creating and setting out the terms of a trust.
- A share purchase agreement is defined as a legal contract between a seller and a buyer of shares. They may be referred to as the vendor and purchaser in the contract. The specific number of shares are listed in the contract at the stated price. This agreement proves that the sale and the terms of it were agreed upon mutually.
- Share Purchase Agreement is an agreement entered into between the buyer and seller(s) of shares of a target company. Usually Share Purchase Agreements entail that the buyer would be taking over whole or significantly whole of the undertaking of the company.
- A shareholders' agreement is a contract between the shareholders of a company and the company itself. It ties the shareholders to rules to preempt issues that might become contentious in the future. A shareholders' agreement mentions the shareholders' rights and obligations, regulates the ownership of shares, privileges, the management of the company, voting and various other insulative provisions for shareholders.

- Underwriting is one of the most important functions in the financial world wherein an individual or an institution undertakes the risk associated with a venture, an investment, or a loan in lieu of a premium. Underwriters are found in banking, insurance, and stock markets.
- Resolution as per Cambridge Dictionary means "an official decision that is made after a group or organization has voted". It is a decision or agreement made by the directors and shareholders of the company. When a resolution is proposed it is called motion. After passing a resolution company is bound to act according to it.

GLOSSARY

Arrangement: "Arrangement" has a wider interpretation and includes reconstructions and amalgamations.

Amalgamation: The amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings.

Mortgaged Money and Mortgage Deed: The principal money and interest of which payment is secured for the time being arc called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

Debenture Trustee: A debenture trustee means a trustee of a trust deed for securing any issue of debentures of a body corporate.

Share Purchase Agreement: A share purchase agreement is defined as a legal contract between a seller and a buyer.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Draft a Resolution for appointment of 'Mr. D' as Company Secretary pursuant to Section 203 of The Companies Act, 2013.
2. Distinguish between the following :
   (i) Ordinary Resolution and Special Resolution
   (ii) Simple Mortgage and English Mortgage.
3. 'Corporate decision making process has to be collective as per law'. Comment.
4. 'Registrar of Companies is the Primary Regulatory Authority for the companies.' Comment on this statement.
5. What are the powers of Board of Directors of a Company that can be exercised only in a full fledged Board Meeting under the provisions of The Companies Act, 2013.
6. What is a Resolution by Circulation as per Section 175 of the Companies Act, 2013 ?
7. Draft a specimen Board Resolution of appointment of Mr. S as Managing Director of M/s. RST Ltd.
8. Write notes on the following :
   (a) Conditions to be kept in mind while drafting a Usufructuary Mortgage Deed.
   (b) Underwriting and Brokerage Agreement.

10. Draft a deed of redemption or re-conveyance of mortgage property by the mortgagee in favour of the mortgagor.

LIST OF FURTHER READINGS

- Companies Act, 2013 and Rules made thereunder
- Transfer of Property Act, 1882

OTHER REFERENCES (Including Websites / Video Links)

- https://www.mca.gov.in/content/mca/global/en/home.html

Art of Opinion Writing

Lesson

7

KEY CONCEPTS

■ Opinion Writing ■ Introductory Matters ■ Customary Practice ■ Officers' Certificates: ■ Company Secretaries Auditing Standard

Learning Objectives

To understand:

- Different types of Legal opinions
- Points relating to improve Opinion writing
- The matters to be covered in Opinion
- Standards applicable in Opinion Writing
- Opinion writing as per CSAS-3
- The application of opinion writing in practical situations

Lesson Outline

- Introduction
- Case for Opinion Writing
- Types of Legal Opinions
- Quality of Writing
- Form and elements of the Opinion Letter
- Things to be kept in mind while preparing for Opinion
- Standards applicable to Preparation of an Opinion
- Company Secretary Auditing Standard on Opinion Writing
- Sample formats of Opinions
- Case studies on Opinion Writing
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites/video links)

REGULATORY FRAMEWORK

- Company Secretaries Auditing Standards

INTRODUCTION

A professional opinion on any subject/ issue/ matter at hand is a written statement by an expert based on giver's professional understanding of that particular aspect of any matter. A person might want to know the correct legal position on a matter of interest or the likelihood of his winning a case if he initiates legal proceedings based on the information that he has supplied to the expert. Example, a client (querist) may request a tax opinion from its counsel to provide a basis for the avoidance of penalties, if the tax aspects of a transaction are later challenged.

The term "opinion" can be defined in a variety of ways, depending upon the context in which it is used. In business transactions, a legal opinion regarding a particular issue is customarily presented in an opinion letter and is widely understood to express the opinion giver's professional understanding of the legal principles generally applicable to a specific transaction or applicable to a particular aspect of the transaction. Many commentators view an opinion letter as a document that provides the opinion recipient with the opinion giver's professional judgment about how the highest court of the jurisdiction whose law is being addressed would resolve the issues covered by the opinion letter on the date of the opinion. It is widely recognized that neither an opinion letter nor any particular legal opinion expressed in it is intended to be or is a guarantee of a particular outcome. Companies may also seek opinion from evaluation and monitoring experts on the effectiveness of the projects being funded by its corporate social responsibilities (CSR) obligations under the Companies Act, 2013. ESG is another upcoming area where companies may seek written opinion of outside experts.

CASE FOR OPINION WRITING

An effective and legally sound legal opinion has an immense value. It can show where a party stands in a given factual matrix when looked from a legal perspective and also save time and money spent in futile litigation proceedings. Business savvy clients do not want to litigate, defend or enter into transactions without obtaining a written opinion from at least one legal expert if not more. Some of the common purposes for which legal opinion are sought are as follows:

1. **Lawfulness of an action:** Opinion letters are given when one wants to know if an action is lawful.
2. **Legal consequences:** Sometimes a party entering into a transaction obtains legal opinion to ascertain if the action will lead to desired legal consequences.
3. **Answer questions:** A client may be confused about an issue and they want professional guidance in the area. They also address the question raised by other professionals. Legal opinions provide an authoritative basis for reports, opinions, and reports on matters where other professionals lack the professional capability to make judgments. For example, an opinion regarding local law provided to foreign counsel.
4. **Regulatory requirements:** Sometimes legal opinion has to be sought because it is mandated by law to get the opinion of outside legal expert.
5. **Compliance:** A legal opinion can be sought for assessing the requirements of the regulatory regime so that the querist can meet the compliance requirement.
6. **Protective shield:** Clients sometimes desire the protection of an expert's legal opinion to be used as evidence of lack of *mens rea* in certain proceedings.
7. **Designed to mislead:** Sometimes promoters of unscrupulous schemes obtain as many opinions from different experts as is possible and use the one which is favourable to their scheme of things.

8. **To satisfy contractual requirements:** Sometimes a clause in commercial contracts require the opinion of an expert. E.g.: an opinion given by issuer's counsel to investors in connection with the sale of securities or by borrower's counsel to the lender pursuant to a loan agreement.

9. **Due Diligence:** Professionals and clients often cite due diligence as the principal reason for requesting opinion letters in business transactions.

TYPES OF LEGAL OPINIONS

1. **Advices on Transaction:** Due diligence is the principal reason for opinion letters in business transactions. An opinion letter may be one component of a party's due diligence, but it is not normally a substitute for due diligence performed by the opinion recipient and its counsel.

2. **Advices on Law:** Sometimes the client would want to know how the law will apply to a given situation. Without in-depth knowledge of law and legal research one cannot give an opinion to the satisfaction of the client. The proper way is to start with the cases and work through to reach a deduction as to the principle of law that covers the situation. Quite often however one forms a value judgment as to what the conclusion ought to be from first principles and moral feelings and then searches for the authorities to support this conclusion. This is top down reasoning should be avoided.

3. **Opinions on Facts:** The third type of opinion is one which is predominantly related to facts. One is given a series of statements and documents and asked whether on that material there are reasonable prospects of prosecuting or defending the claim. The matter may be a simple personal injury case in which the law is well settled. The real question is whether one's side's witnesses will be believed or not. The first problem about this sort of opinion is that seldom does one have any real knowledge of what the other side's witnesses are going to say. One often has little idea of the quality of one's own witnesses and none at all of that of the opposition's. Here one has to search relevant material from the material one is provided with and then arrive at the probabilities of success or failure.

4. **Advices on Evidence:** A special type of opinion is a brief to advice on evidence.

   When advising on fact or law one should not be too positive. In relation to advices on quantum of damages one can never be sure so it is advisable to not give a precise figure but a range. Where the law is in a state of flux or doubtful the legal expert should always draw attention to this explaining why one cannot be more positive.

QUALITY OF WRITING

The primary purpose of a legal opinion is communication of advice to either a layman or professional client. It is therefore of the utmost importance that it is clear and in plain, understandable English. Every word of the legal opinion should be chosen because it communicates precisely the advice which the writer intends to covey.

It is important to write in plain English wherever possible. A good legal opinion will avoid archaic language and legalese. It will no doubt be conveying specialised legal advice and must therefore be as detailed as the writer thinks necessary. The use of plain English simply involves saying what needs to be said in the clearest way possible and avoiding unnecessary verbosity. There are times where technical terms will have to be used if they carry the precise meaning of the advice being delivered. This should not be shied away from. Perfect grammar, punctuation and precision of language are essential.

A legal opinion will often contain a complicated set of facts which will have to be sorted into specific legal issues and defined in legal terms. Clarity of expression is therefore vital. Clarity of expression can only be achieved through thorough planning and thought.

A thorough plan will lead to a logical structure. Any legal opinion will be conveying a particular point, but that point will inevitably need to be broken down into sections. Clarity of legal writing also requires conciseness. This does not necessarily imply brevity, but once the point has been made, nothing more need be said. Having said that, completeness and total accuracy is vital and conciseness should not come above giving full and precise advice.

Most of the time, the clients approach the expert with an unclear question. So, when drafting the questions, they need to be made more sensible. It must be ensured that the questions are phrased in a way that communicates the client's issues but in a more clear and understandable way.

FORM AND ELEMENTS OF THE OPINION LETTER

Coverage in Opinions

There is no form for a legal opinion prescribed by law or rule. Opinion letters, however, have developed a certain uniformity because of their repeated use. In general, a legal opinion will cover the following:

1. **Introductory Matters:** such as the date, the identity of the opinion recipient, the role of the opinion giver giving the opinion, and the purpose for which the opinion is given.
2. **References:** a general or specific recitation of the documents and other factual and legal matters reviewed by the opinion giver, including in some instances a statement of reliance on various factual assumptions.
3. **Legal Conclusions and Qualification:** the legal conclusions expressed in the opinion, and any qualifications to the legal conclusions.
4. **Peculiar Matter:** matters peculiar to the particular opinion, such as matters relative to opinions of local counsel in other jurisdictions and specific limitations on the use of the opinion.
5. **Signature:** the signature of the opinion giver.

Forms and Elements of Opinion

There is likely to be some resistance to a high fee charged for a short opinion. The work that the legal expert has done may not be obvious and therefore very short legal opinions are rare to find. Therefore, the form and essential elements can be as follows:

1. **Introductory Matters**
    - i. *Title*: It should be entitled OPINION or ADVICE and contain the title of the case in the heading.
    - ii. *Date*: The opinion speaks as of the date mentioned on the opinion letter and need not state separately the effective date of the opinion. If for some reason a conclusion expressed in the opinion is reached as of a date prior to the delivery of the opinion, the opinion giver may so specify in the opinion letter.
    - iii. *Addressee*: The opinion is normally addressed to a specified party in an individual capacity, to a party as representative of a larger group, or to an identified class of persons. In all cases, it is customary practice for the opinion recipient to be clearly identified in the opinion letter.

    Generally, the only person or persons entitled to rely on an opinion are the person or persons to whom the opinion letter is specifically addressed. No additional limitation need be expressed in the opinion letter. As a matter of prudence, however, many professionals include a sentence at the conclusion of the opinion letter to the following effect:

    The opinions set forth herein are rendered solely for your use in connection with the above transaction and may not be relied upon, delivered to or quoted by any other person or for any other purpose without our prior written consent.

    In some limited instances, an opinion letter is intended to be relied upon by persons other than the stated addressee(s). Examples include an opinion letter addressed to an underwriter concerning the validity of a proposed stock issuance that is also to be relied on by the issuer's transfer agent, and an opinion letter of local counsel on which the principal opinion giver will rely to render its opinion. In those cases, the opinion letter normally states specifically who, in addition to the addressee, is entitled to rely upon the opinion.

2. Introduction

The first paragraph should serve as an introduction to the legal opinion, laying out the salient facts and what the expert has been asked to advise about. An opinion must set out the questions on which it is sought very clearly and unambiguously. If the Querist (which is what we call a person who seeks the opinion) is himself confused, his questions will be equally mindless. It is your duty as an expert to unravel his tangled skein of thought, identify the issues that are material and on which the relief he wants depends, and then frame them as questions. Of course, these must resemble the original questions, because otherwise the Querist will feel that you have not answered him, however stupid his questions might have been. If the querist is not very clear about the subject matter on which he/ she seeks the opinion, then once the expert has formed the queries based on the briefing, it is always advisable to check with the querist if the expert has correctly formed the questions and proceed only after he/ she has received a go-ahead from the querist. If it's not done there is a possibility that after the opinion is delivered, the querist might get around and say that the expert did not form the queries as per his briefing. Thankfully, such confused briefings are very rare in this field and most of the times the querist has very specific and precise questions that need to be answered.

3. Definitions

For purposes of brevity and clarity, it is advisable to define the principal terms used in the opinion. Whenever a term utilized in an opinion letter is derived from statutory law, the opinion customarily uses that term or provides an express definition. Terms that are defined in the underlying Agreement are most often given the same definitions in the opinion, either by defining each term in the opinion or by a reference to the Agreement, such as:

The terms used in this opinion letter that are defined in the Agreement have the same definitions when used herein, unless otherwise defined herein.

4. Understanding Facts of the Case

The obligation of an opinion giver to exercise diligence in determining the factual and legal bases for an opinion is implicit in every opinion letter. The first rule is always to commence the opinion by setting out the facts that have been given or have been presumed from the instructions given. Adopting the practice of commencing opinion by outlining the facts upon which one is advising serves another purpose as well. It crystallises those facts in one's mind, visualises any gaps as to which one may need to take further instructions or make assumptions and, where issues of fact are involved, suggests areas which need attention.

Any fact that has not been supplied should not be included in the narration. However, any inference or presumption one has made from the facts must be included and should not forget to mention that the inference or presumptions are his personal opinions. Facts should be stated in a manner which brings out the materials that will become material for answering questions, whether with an "yes" or a "no".

The advantage of listing down the facts is that if the ultimate conclusion is wrong, or inapposite, because the facts are wrong, the fault will be that of the client for giving the wrong data or at least the error may be veiled by the failure of the client or solicitor to adapt opinion to the true facts.

The opinion giver must be satisfied that he has reviewed or assumed (expressly or implicitly) sufficient facts to support each of the legal conclusions expressed in the opinion letter. In case of legal opinion in business transaction, in most instances the opinions in an opinion letter can be supported by an examination of documents, either in their original form or copies identified to the satisfaction of the opinion preparers, or of certificates of public officials or officers of the Company relating to factual matters.

Some opinion givers preface their opinion letters with a reference to a detailed list of the documents and certificates examined, together with either a statement that they have examined such other documents and have made such further legal and factual investigation as they consider necessary for purposes of rendering the opinion or, alternatively, a specific disclaimer to the effect that they have not made any other examination or factual investigation. Other opinion givers prefer to deliver opinion letters that merely set forth language to the following effect:

We have been furnished with and have examined originals or copies, certified or otherwise identified to our satisfaction, of all such records of the Company, agreements and other instruments, certificates of officers and representatives of the Company, certificates of public officials and other documents as we have considered necessary to provide a basis for the opinions hereinafter expressed. We have not independently established the facts stated therein.

At times, the decision whether to set forth a list of documents and certificates reviewed by the opinion giver is dictated by the opinion recipient. Certain lending institutions and securities underwriters desire the 'long-form' opinion letter containing such a list to provide the additional comfort that the opinion giver has reviewed the listed documents for purposes of its opinion. In most instances, however, the decision is based on the preference of the opinion giver. If the opinion giver intends to limit the scope of the opinion to the documents and certificates listed, it should include an express statement to that effect in the opinion.

a. **Reliance on Certificates of Public Officials:**

Usually opinions include legal conclusions concerning the corporate nature and existence of the Company and its ability to transact business. They also often include legal conclusions concerning the good standing and ability of the Company to transact business in other jurisdictions. These opinions customarily are based on certificates of public officials in the various jurisdictions involved. The principal certificate among them is the certified copy of the Articles of Incorporation, together with amendments. This certification represents conclusive evidence of the formation of the corporation and *prima facie* evidence of its existence for all purposes.

Certain certificates maybe required from various state agencies. For example, in loans backed by mortgage of immovable property, certificates showing the title to the property may be required. Many states have implemented websites on which such information can be accessed at any time. The information on any particular website can only be relied upon as current to the extent specified by the state agency responsible for that website.

Because certificates of public officials will normally bear a date before the delivery of the opinion, the opinion giver must decide what additional verification, if any, is necessary for purposes of the opinion. Additional verification may or may not be necessary depending upon the facts and circumstances of the case. In general, customary practice does not require that every certificate be updated. Opinion recipients routinely accept opinions that in part are based on certificates of a reasonably recent date.

b. **Officers' Certificates:**

In business transactions opinion preparers typically obtain two somewhat analogous types of officers' certificates:

(1) certificates verifying the authenticity of referenced documents; and

(2) certificates relating to factual matters not readily verifiable by the opinion preparers or only verifiable at considerable cost.

A common example of the first type of certificate is a certificate of the secretary of the Company certifying that, attached to the certificate, is a true copy of the articles, bylaws and corporate minutes or resolutions pertaining to the transaction.

The second type of officers' certificate relates to factual matters not readily verifiable or only verifiable at considerable cost by the opinion giver when preparing the opinion. These certificates are used as factual support for legal conclusions expressed in the opinion. The need for them arises, for example, when an opinion giver renders an opinion that the transaction will not cause a breach of the terms of any loan agreement to which the client is a party. The opinion giver is competent to review the loan agreements but may need an officers' certificate to identify the loan agreements to which the client is a party since, typically, the opinion giver is not in a position to know what agreements to review.

The opinion giver must use its own judgment in determining under what circumstances (and to what extent) reliance on factual matters contained in the certificates can be justified. The opinion giver should also exercise its own judgment in determining those circumstances and matters which reasonably should be supported by an officers' certificate.

c. Documentary Examination Assumptions:

Opinion givers customarily assume that the signatures on all documents examined are genuine, that copies of documents examined conform to the originals, and that such documents are binding on the other parties. Opinion givers often state these assumptions expressly, although by customary usage, they are implicit and need not be expressly stated. If stated, a common formulation of the assumption is as follows:

In rendering this opinion, we have assumed the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as copies; and the accuracy, completeness and authenticity of all certificates of public officers.

5. Research on Relevant Case Laws

After the facts are over the opinion giver may begin his analysis on which the opinion depends. There is no need to set out basic principles of law with which the opinion recipient will be familiar. Otherwise, authorities should be cited to support propositions of laws and when doing so a full citation should be given. It is important to prioritise the authorities cited in a legal opinion in order of importance to the point being addressed. If a particular case is central to the reasoning, the basis on which the case was decided should be set out fully in the legal opinion. It may even be appropriate to quote directly from the judgment although often paraphrasing the effect of the decision will usually suffice. The case being cited must always be referred back to the facts being dealt with in the legal opinion. The most authoritative case on the point of law being dealt with must always be cited. For example, there is no point citing a High Court judgment which has been overruled by a subsequent judgement of the Supreme Court.

An easy way of analysing is to first set out the law and the provisions of the law (or laws) that are applicable. Then go on to summarize the binding precedents (judgments of the Supreme Court and the High Court of the State exercising jurisdiction over the subject matter) with full citations. If the choice of extracts is precise enough, the ultimate opinion will almost automatically appear from the extracts of the judgments that have been quoted.

With regard to statute, much of the same advice will apply. If there is a statutory provision which deals directly with the subject of the legal opinion then this should be clearly stated and its effects fully explained. Care must be taken to ensure that any statutory provision being cited is in force at the time of writing the legal opinion.

In case of business transactions an opinion letter covers only law that a lawyer exercising customary professional diligence would reasonably be expected to recognize as being applicable to the opinion giver's client, the transaction or the Agreement to which the opinion relates.

6. Expression of the Opinion

Once the facts are organised, a legal framework needs to be constructed into which these facts can be logically slotted. A legal opinion in a personal injury action for example will be based on negligence and therefore will usually be structured along the lines of duty, breach, damages, causation, forseeability and contributory negligence. In a negligence legal opinion it will be vital to assess the level of damages that the client can expect to receive or pay out. This will be at the forefront of the client's mind.

The substantive portion of the opinion normally begins with an introductory statement referring to matters upon which the opinion giver has relied. This introductory statement is generally phrased in a manner that does not limit the opinion giver's investigation to the matters specifically described, but rather indicates that the opinion giver has made such further investigation as it considers appropriate under the circumstances. An example of such an introductory statement reads as follows:

Based on the foregoing and upon such further investigation as we have considered necessary, it is our opinion that:

The opinion can be in the form of summary statement of conclusions or, where a series of discrete questions have been asked, precise answers to the particular questions asked. If the argument has been properly conducted these answers may well be monosyllabic. "Yes", "no", or "does not arise". However, when the monosyllabic answers cannot apply, the answers must be kept short and to the point. Where the querist has asked "Is the transaction a valid mortgage", the answer can be "Yes" or "No", followed by "in view of what has been said in paragraphs such and such of the facts and paragraphs such and such of the analysis". However, where the question is "Why is this not a valid mortgage" the opinion giver cannot answer with 'yes' or 'no' but must explain, though with reference to what has been written in the analysis sections.

7. Qualifications

In practice, opinions are frequently subject to qualifications that narrow their apparent scope. Some opinions may be qualified by assumptions or exceptions. Opinions also may be qualified as to scope, particularly when the opinion covers a specialized area of the law. Qualifications take various forms, depending upon the opinion giver's preference and the length of the qualification. If the qualification is short and applies only to one portion of the opinion letter, it often will be included in the operative language of the specific opinion by the reference "subject to ______________________ " or "except "

If the qualification pertains to more than one portion of the opinion letter or is lengthy, it will usually appear separately from the operative opinion clauses. Typical clauses introducing such qualifications include the following: "our opinion in paragraph _______________________ is subject to;" or "we express no opinion on the effect of;" or "in rendering our opinion in paragraph we have assumed that."

To simplify the analysis process, number all previous paragraphs. This will relieve you of the burden of repeating previously written information.

8. Special Matters

a. Foreign Law and Reliance on Local Counsel:

The principal opinion giver for a party in a business transaction typically renders an opinion covering the laws of the state and applicable central laws and sets forth this limitation in the text of the opinion. The opinion giver may also be requested to furnish an opinion on matters governed by the laws of some other country. Unless the limited nature of the review of another jurisdiction's law is described in the opinion, because the opinion giver would likely be held to the same standard as a lawyer licensed or otherwise competent to give advice on the law of the other jurisdiction, the opinion giver will, in most instances, seek the advice and opinion of local counsel.

An opinion giver should, however, always be cognizant of the fact that rendering an opinion based upon legal principles applicable in foreign jurisdictions exposes the opinion giver to liability for a negligent interpretation of that law.

The retention of local counsel to furnish an opinion raises different questions with respect to the principal opinion giver's responsibility for the opinions expressed in the local lawyer's opinion. If the principal opinion giver renders an opinion on the same matters as the local lawyer, the opinion giver customarily expresses its reliance on the local counsel's opinion (an example of recommended language is included below) rather than simply restating the local counsel's opinion in the body of its opinion:

In rendering the opinions expressed in paragraphs, and ______________________, we have relied [solely] on the opinion of ___________________, in so far as such opinions relate to the laws of ________________, and we have made no independent examination of the laws of that jurisdiction.

When expressly stating reliance on the opinion of local counsel, the principal opinion giver's sole responsibility is to exercise reasonable care in the selection of local counsel (if, in fact, the principal opinion giver selects such counsel). The opinion giver is not responsible for independently investigating or otherwise verifying the law of the foreign jurisdiction. The principal opinion giver may assume a broader responsibility to examine the statutory and case law of the foreign jurisdiction if the principal opinion giver's opinion letter states that the opinion giver "concurs" with the legal opinions provided in the opinion letter of local counsel or that the local counsel's opinion letter is satisfactory in substance. The preferred and more recent common practice is for the local counsel's opinion letter to be addressed to the recipient of the principal opinion letter (rather than to the principal opinion giver) and for the principal opinion giver not to render an opinion on that subject.

b. Reliance on Opinion of 'Special' Counsel:

Considerations similar to those arising in the selection and use of local counsel apply in the retention of special counsel. A lawyer who has no expertise in a specialized matter should not render an opinion in the specialized area, and should refer the matter to a lawyer qualified in that field. The principal opinion giver normally does not furnish an opinion on the same matters as the specialist, even an opinion rendered solely in reliance on the specialist's opinion. The specialist customarily is retained specifically because the principal opinion giver does not have sufficient expertise to render the opinion in question.

9. Signature

The procedure typically followed by most law firms is for the opinion letter to be manually signed in the name of the firm. Some law firms follow different practices, such as "XY&Z by A, a partner" or "A on behalf of XY&Z."

10. Usual disclaimers

Disclaimers can save the opinion giver from being reported for malpractice if the opinion is wrong. Under the disclaimer, it is written that the opinions provided are based on the law as per the time of drafting the opinion. Moreover, it is also indicated that the opinion is also based on the documents and facts provided. All the documents that the clients provided for the sake of drafting the legal opinion can also be listed.

THINGS TO BE KEPT IN MIND WHILE PREPARING FOR OPINION

Differences between opinion givers and opinion recipients generally arise over:

(1) the time and expense required to render an opinion on a matter that is peripheral to the primary concerns of the opinion recipient,

(2) the appropriate scope of a particular opinion,

(3) whether the opinion will cover matters that are essentially factual in nature,

(4) whether the opinion will cover matters about which there is some recognized legal uncertainty, and

(5) requests for what historically were referred to as “comfort opinions” but are more properly referred to as “negative assurances.

1. Opinions that are not Cost-Effective

Opinion givers are held to certain standards of skill and care in rendering legal opinions. Although the nature and extent of the applicable standards of care are not defined, the opinion giver is obligated to avoid misleading opinion recipients about the scope and depth of any investigation undertaken. Moreover, professionals are responsible for conducting customary legal and factual diligence in rendering legal opinions. For this reason, rendering an opinion letter is a costly process, even in the context of a relatively straightforward matter or business transaction. In determining whether a particular opinion is appropriate under the circumstances and, if so, what the nature and scope of that opinion should be, the opinion giver must consider the costs of giving the opinion relative to the benefits to the client of satisfying the request of the opinion recipient.

2. Inappropriate Scope

In a business transaction a number of opinions would be considered inappropriate because their scope is not reasonably within the competence of the opinion giver or they are not cost-justified. Examples of such opinions include the following:

i. the client is qualified to do business as a foreign corporation in all jurisdictions in which its property or activities require qualification or in which the failure to qualify would have a material adverse effect on the client;

ii. the client is not in material violation of any central, state or local law, regulation or administrative ruling; and

iii. the client is not in material violation of any contract, indenture or undertaking to which it is a party or by which it may be bound.

The common characteristic of these examples is that they are essentially open-ended. Requests for opinions of this sort inherently cast into question whether the party requesting the opinion may be effectively seeking legal “insurance” rather than legal “assurance.” an opinion giver may properly refuse to give such opinions.

3. Confirmations of Fact; Negative Assurance

Opinion givers should take care that the opinion letter makes a clear distinction between those portions that constitute actual opinions on matters of law and other portions (including confirmations of a purely factual nature) that do not.

Opinion givers generally decline to provide confirmations of purely factual matters. Although often characterized as an opinion, these confirmations in essence ask the opinion giver to express a view not founded on professional competence. The function of a legal opinion is to provide informed judgments on matters of law, not assurance regarding factual statements that the parties to a transaction are in a better position to verify. An opinion giver normally should not be asked to state that it lacks knowledge of particular factual matters. Opinion givers generally should not be asked for opinions on the outcome of pending or threatened claims or legal actions.

4. Opinions Regarding Issues of Significant Legal Uncertainty

A fourth common area of disagreement involves legal issues that, although potentially appropriate for inclusion in an opinion, are subject to significant legal uncertainty. If the uncertainty extends only to one of the opinions expressed, the question is frequently resolved by a “qualification” to that opinion. The “qualification” may be a statement that the particular opinion does not cover the effect of a certain law or laws or may identify the uncertainty. Such qualifications are usually acceptable if they relate to demonstrable legal uncertainties.

An opinion giver should not render an unqualified opinion on an issue as to which there is significant uncertainty. If there is disagreement regarding the existence or degree of the legal uncertainty, a compromise is sometimes reached in the form of a “reasoned” opinion. In that situation, the opinion giver does not simply express a legal conclusion but also presents a discussion of relevant statutory and judicial authorities, often (but not always) indicating that the matter is uncertain or “not free from doubt,” and stating a prediction of the likely judicial resolution of the matter if the issue were appropriately presented to a court of competent jurisdiction. By their nature, these opinions can require substantially more time and effort in their preparation than would ordinarily be the case.

Where an issue of legal uncertainty exists, the opinion giver should discuss the matter with its client before agreeing to issue the requested opinion because the opinion may influence the form or even the viability of the business transaction as proposed.

5. Fraudulent or Misleading Opinions and the Limits of Professional Competence

A professional should not render an opinion that he/ she knows would be misleading. In addition, a professional should not render an opinion based on factual assumptions if he/ she knows that the assumptions are false or that reliance on those facts is unreasonable. In addition, a professional should not be asked to render opinions on matters that are outside his or her area of professional competence. Where an opinion is appropriate but beyond the competence of the opinion giver, then the opinion giver should associate competent professional to render the opinion. In no event should a professional be asked for opinions that are generally beyond the professional competence of professionals from that area of practice, such as asking a Professional to express his opinion on financial statement analysis or valuation.

6. The Time to prepare Opinion Letter

Sometimes one may be faced with the necessity of giving an urgent opinion or one when the time is not available to allow one to perform the depth of research one would wish. This may occur because the matter is truly urgent or more often because the client has delayed moving for advice until the last possible moment. In such a case one should qualify the opinion with a disclaimer.

Sometimes the reason for urgency might be of one’s own making. Even in these circumstances one should not make the mistake of giving a half baked, half thought out opinion over the telephone and promising the written advice at a later date. If the opinion giver is wrong not only will he face considerable embarrassment in correcting his informal opinion but if his client has acted on the faith of it, the opinion giver will have no defence to a claim for damages. Further the desire of opinion giver to make the final opinion accord with his interim one will destroy his objectivity.

Example: Mr. A, comes to you for taking opinion on a matter, which is required to be used in a return to be filled on the next day.

In this scenario, proper due diligence should be done before giving any opinion.

STANDARDS APPLICABLE TO PREPARATION OF AN OPINION

1. **Generally**

   A professional is expected to be well informed and to exercise such skill, prudence and diligence as professionals of ordinary skill and capacity commonly possess and exercise in the performance of the tasks which they undertake. When a matter falls within a recognized area of legal specialty, such as tax or securities law, it is advisable to take that assignment only if it falls within the competence of the professional.

2. **Customary Practice**

   An attorney does not ordinarily guarantee the soundness of his opinions and, accordingly, is not liable for every mistake he may make in his practice. He is expected, however, to possess knowledge of those plain and elementary principles of law which are commonly known by well informed attorneys, and to discover those additional rules of law which, although not commonly known, may readily be found by standard research techniques.

   The opinion preparers should devote the time needed to interpret and apply legal principles relevant to the situation at hand, ascertain (through appropriate inquiry and certificates of officers of the Company) the facts that underlie the opinion, and identify areas of significant uncertainty (if any) in the interpretation and application of legal principles. In certain cases, opinion givers may conclude that it is necessary to conduct research with respect to particular legal principles or to conduct an investigation of the underlying facts relevant to the opinion.

3. **Fraudulent or Misleading Opinions**

   An opinion giver may be liable for an opinion that constitutes fraudulent misrepresentation. A professional owes a duty to non-clients to refrain from fraudulent misrepresentation. It is generally understood that, regardless of compliance with other standards, and even if an opinion is technically correct, a professional should not render an opinion that he recognizes would be misleading to the opinion recipient.

4. **Ethical Issues Relating to the Provision of Opinions to Non-clients**

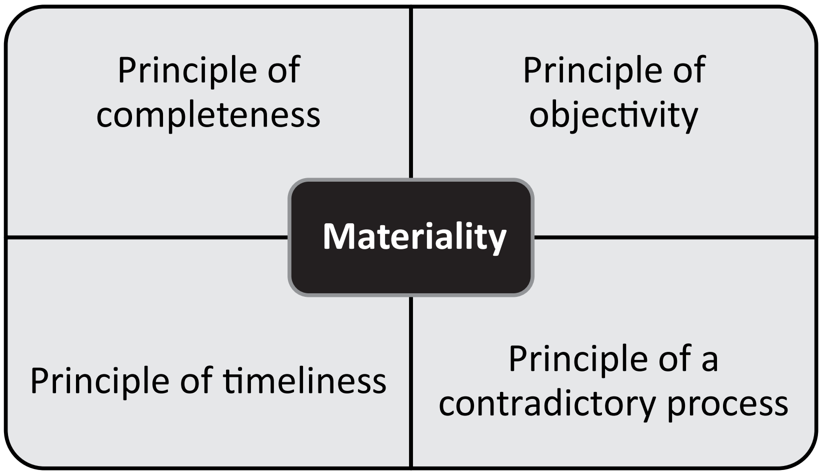
   A professional delivering an opinion letter to a non-client should also consider ethical principles. For example, rendering an opinion to a non-client may conflict with the opinion giver's ethical obligations to maintain the confidences of its client. He should decline to give legal opinion in such cases.

COMPANY SECRETARY AUDITING STANDARD ON OPINION WRITING

The Company Secretaries Auditing Standard (CSAS-3) is applicable to the Auditor undertaking Audit under any statute. The Standard deals with basis and manner for forming Auditor's opinion on subject matter of the audit. The objective of CSAS-3 is to enable the Auditor to lay down the basis and manner for evaluation of the conclusions drawn from the Audit Evidence obtained and express the opinion through written report.

Process of forming an opinion under CSAS-3

Step 1: Materiality


Principle of completeness
Principle of objectivity
Materiality
Principle of timeliness
Principle of a contradictory process

The Auditor shall consider Materiality while forming his opinion and adhere to:

a. The principle of completeness that requires the Auditor to consider all relevant Audit Evidence before issuing a report;

b. The principle of objectivity that requires the Auditor to apply professional judgment and scepticism in order to ensure that all reports are factually correct and that findings or conclusions are presented in a relevant and appropriate manner.

c. The principle of timeliness that implies preparing the report in due time; and

d. The principle of a contradictory process that implies checking the accuracy of facts and incorporating responses from concerned persons.

Note: The Auditor may consider various judgments, clarifications, opinion, conflicting interpretations while framing the opinion to the best of his professional acumen.

Step 2: Precedence and Practices

The Auditor shall adhere to generally accepted precedence and practices in relation to forming of an opinion as may be available from historical perspective of any kind of audit.

Step 3: Third Party Report or Opinion

The Auditor shall adhere to the following while forming an opinion based on Third Party reports or opinions:

(a) The Auditor shall indicate the fact of use of Third Party report or opinion and shall also record the circumstances necessitating the use of third party report or opinion;

(b) The Auditor shall indicate the fact if Third Party report or opinion is provided by the Auditee;

(c) The Auditor shall consider the important findings/ observation of Third Party;

(d) The Auditor shall, if necessary and feasible, carry out a supplemental test to check veracity of the Third Party report or opinion.

Step 4: Form of an Opinion

Form of an Opinion

Unmodified Opinion

Modified Opinion

Limitation

1. **Unmodified Opinion**

   The Auditor shall express an unmodified opinion when based on Audit Evidence, the Auditor concludes that:

   a. there is due compliance with the applicable laws in terms of timelines and process; and

   b. the Records as relevant for the audit verified by him as a whole are free from Misstatement and maintained in accordance with the applicable laws.

2. **Modified Opinion**

   The Auditor shall express modified opinion when the Auditor concludes that:

   (a) based on the Audit Evidence obtained, there is non-compliance with the applicable laws in terms of timelines or process; or

   (b) based on the Audit Evidence obtained, the Records as a whole are not free from Misstatement; or are not maintained in accordance with applicable laws; or

   (c) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that there is due compliance with the applicable laws in terms of timelines and process; or

   (d) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that the Records as a whole are free from Misstatement; or are maintained in accordance with applicable laws.

   Whenever the Auditor expresses a modified opinion or disclaims an opinion, the text of the opinion shall be either in italics or bold letters.

3. **Limitation**

   If, after accepting the Audit Engagement, the Appointing Authority imposes a limitation on the scope of the audit which, in the opinion of the Auditor, is likely to result in the need to express a modified opinion or to disclaim an opinion, the Auditor shall request the Appointing Authority to remove the limitation.

   If the Appointing Authority refuses or fails to remove the limitation, the Auditor shall communicate the matter to the Management and determine whether it is possible to perform alternative procedure to obtain sufficient and appropriate Audit Evidence.

   If the Auditor is unable to obtain sufficient and appropriate Audit Evidence, the Auditor shall determine the implications as follows:

   a. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be non-material, the Auditor shall modify the opinion; or

b. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be material, the Auditor shall express disclaimer of opinion.

Step 5: Auditor's Responsibility

The Auditor's Report shall include a section with the heading "Auditor's Responsibility". Auditor's Report shall state that the responsibility of the Auditor is to express opinion on the compliance with the applicable laws and maintenance of records based on audit. The Auditor's Report shall also state that the audit was conducted in accordance with applicable Standards. The Auditor's Report shall also explain that those Standards require that the Auditor comply with statutory and regulatory requirements and plan and perform the audit to obtain reasonable assurance about compliance with applicable laws and maintenance of Records.

Auditor's Report shall also state that due to the inherent limitations of an audit including internal, financial and operating controls, there is an unavoidable risk that some Misstatements or material non-compliances may not be detected, even though the audit is properly planned and performed in accordance with the Standards.

Step 6: Format of the Report

The report shall be addressed to the Appointing Authority unless otherwise specified in the Audit Engagement Letter or provided in the applicable law. The report shall be detailed enough to serve its intended purpose. Where specific formats are prescribed, those formats shall be followed for reporting. If any information cannot be appropriately placed within the paragraphs of the report, it shall be given in form of annexure(s).

Signature block shall mention the name of the audit firm along with the registration number, if any, the name of the Auditor, certificate of practice number, the membership number of the Auditor, specifying whether associate or fellow member, as applicable. The Auditor shall clearly mention date and place of signing the report, in case report is signed by two different persons on different dates or different places; same shall be mentioned in the report.

SAMPLE FORMAT OF OPINIONS

A few sample opinion pieces can give a better understanding of the practical aspects of opinion writing. Professionals have to keep in mind that they need to focus on the structure and the presentation of the opinion and not the opinion per say.

(Note: These are only samples and may not be the correct enunciation of law)

Sample 1

Opinion

Date: _________

To,

____

____

On the basis of the reference received by ____________, the following question has been framed for legal opinion:

Question: Is the appointment of a person as a sole arbitrator by one party barred in law even if the same be provided in the arbitration agreement between the parties?

1. The Arbitration and Conciliation Act, 1996 does not bar the appointment of a person as a sole arbitrator by one party. However, it places certain fetters on such appointments and these have further been

elaborated by the Supreme Court and various High Courts in a number of judgments. Having said that, there are still certain areas that need to be ironed out.

2. According to section 12(3) of the Arbitration and Conciliation Act, 1996,

   An arbitrator may be challenged only if—

   (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality,

   or

   (b) he does not possess the qualifications agreed to by the parties.

3. Clause (a) of section 12(3) is clear in its language that the appointment of an arbitrator can be challenged if there are circumstances that give rise to justifiable doubts as to his independence or impartiality. Appointment of a sole arbitrator by one of the parties raises justifiable doubts as to the arbitrator's independence or impartiality. Thus the other party can always challenge the appointment of such an arbitrator in Court and the appointment of the arbitrator is most likely to be struck down.

4. The Supreme Court in the matter of *TRF Limited v. Energo Engineering Projects Ltd, (2017) 8 SCC 377* ruled against unilateral appointments of arbitrators and further clarified it in *Perkins Eastman Architects DPC v. HSCC (India) Limited 2019 (9) SCC OnLine SC 1517, where it* held that a party to an arbitration agreement can neither appoint oneself or any other person unilaterally as the sole arbitrator. In both these cases the arbitration clause provided that only the officer at a specified rank or someone nominated by that officer could act as the sole arbitrator.

5. The reason for holding it so is because a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course of the dispute resolution by having the power to appoint an arbitrator. In a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution.

6. If the arbitration clause provides for appointment of sole arbitrator by one of the parties, such arbitrator should be appointed with the consent of the other party. However, if one party appoints a sole arbitrator and the other party does not object to it, it would be considered as a waiver and that appointment would be considered valid. A point to be kept in mind is that such an appointment should not be made by a person who himself is disentitled to act as an arbitrator under the provisions of the Arbitration and Conciliation Act, 1996.

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I advice accordingly.

Sincerely yours,

(Name & signature)

CASE STUDIES ON OPINION WRITING

CASE STUDY 1

Mr. X was acting as a director on the Board of Directors of a company, going by the name of CSCM Private Ltd., between 2006 and 2008. Mr. X is also a shareholder in the said company, and owns approximately 25.66% equity shares. He drew a salary of Rs. 1.50 Lakh per month.

Commissioner of Central Taxes GST, based on the information received, that CSCM Private Ltd. was availing Input Tax Credit (ITC) against fake/ineligible invoices, commenced investigation, under section 67 of the Central Goods and Services Tax Act, 2017, against CSCM Private Ltd.

Mr. X, as per the commissioner, in her statement made to the concerned officer, inter alia, admitted to the fact that he had acted as a director of the company, between 2006 and 2008, and since then, he has been working in the company in the capacity of a mentor/advisor.

Furthermore, Mr. X is also said to have stated that, it is in her capacity as the mentor/advisor to company, that he received Rs. 18 Lakh in the concerned FY i.e. 2019-2020, from the company. According to Mr. X, this money was given as she had been providing "strategic guidance" to the Company.

The Bank accounts of the Mr. X have also been attached.

Mr. X has requested to give opinion in this matter.

Opinion

Date: _________

To,

____

____

On the basis of the reference received by ___________, the following question has been framed for legal opinion:

Question: Whether the attachment of Bank Account of director is sustainable merely on the ground of allegation against Company.

1. Section 83 of the Central Goods and Services Act, 2017

   Provisional attachment to protect revenue in certain cases

   (1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the ***taxable person*** *in such manner as may be prescribed.*

   (2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

2. The Delhi High Court in the case of Roshni Sana Jaiswal v. Commissioner of Central Taxes GST Delhi (East) W.P.(C) NO. 2348 OF 2021 CM NO. 6860 OF 2021 has inter alia decided as under:

> The petitioner claimed, in her voluntary statement, that she was paid Rs. 1.50 crores in the FY 2019-2020 for rendering services in her capacity as a mentor/advisor to Milkfood Ltd. Therefore, even if we assume, for the moment, that, since investigations are on against the taxable person, and therefore, proceedings are pending under section 67 of the Act, there is nothing placed on record to show that there was material available with the respondent, linking the petitioner to purported fake invoices. In other words, in the absence of such material, the impugned action concerning provisional attachment of the petitioner's bank accounts, which is otherwise a "draconian" step, was unsustainable. In the zeal to protect the interest of the revenue, the respondent cannot attach any and every property, including bank accounts of persons, other than the taxable person.

Analysis

In view the above quoted provisions and the case decided by the Hon'ble High Court of Delhi, attachment of the petitioner's bank accounts may be unsustainable

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I advice accordingly.

Sincerely yours,

(Name & Signature)

CASE STUDY 2

A foreign garment brand outsources production to a number of factories in India. Subscribed to the concept of 'Living Wage', the brand wants the factories to pay its workers some extra allowance so that the workers cash in hand is more than minimum wages set by the Government. The Brand intends to pay to factory this extra amount but wants all of it to go into workers hands. The brand had entered into a discussion with its suppliers regarding paying this additional 'Living wage allowance' on a monthly basis to workers but there was some hesitancy on the part of the factories.

The Brand wants to understand the financial implications of paying this extra allowance for the factories and how should the Brand move forward on this.

Opinion

Date: ______________

Dear _____________

____

On the basis of the reference received by ___________, the following question has been framed for legal opinion:

Question: What could be the possible reason for factories'/ employers' reluctance to pay the 'Living wage allowance' to its workers when the Company (Querist) will be paying that amount to the factory/ employer?

1. The reluctance of factories to pay additional living wage allowance stems from the increased financial liability for the factories that the Querist did not factor in while coming up with the additional allocation for living wage allowance.
2. To get the employer on board for payment of living wage, the Brand must ensure that the financial burden on the employer does not increase because of the payment of living wage. The financial burden on employer can increase in atleast four ways:
   a. Through employer's contribution to PF that is currently fixed at 12 percent of basic wages, dearness allowance and retaining allowance.
   b. Through employer's contribution to ESI that is currently fixed at 3.25 percent of wages.
   c. Through payment of gratuity that is contingent on last drawn salary/ wages.
   d. Through payment of bonus that is fixed as a certain per cent of annual salary or wage.
3. Except in rare cases where the employer is willing to bear the additional financial responsibility, the Brand must either ensure that the employer's contributions/ payments remain unchanged. The problem with optimising the payment of additional amount becomes complicated because the contributions of the employer and bonus and gratuity payments by him are dependent on different definitions of wages/ salary. Moreover, in States that have Professional Tax in India, the brand might also want to structure the payment of additional amount so that the employee does not get caught in its net.
4. Provident Fund:

According to section 6 of Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the contribution which shall be paid by the employer to the Fund shall be ten per cent. of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees (whether employed by him directly or by or through a contractor), and the employees' contribution shall be equal to the contribution payable by the employer in respect of him (a proviso empowers the Central Government to increase this contribution to 12 per cent.). Explanation to the section says that for the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Thus the contribution of the employer and the employee is based on basic wages, dearness allowance and retaining allowance and dearness allowance includes cash value of any food concession allowed to the employee.

According to section 2(b) of the Act:

"basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer.

Therefore, the PF contribution is not dependent on house rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment or any presents made by the employer.

5. Employee's State Insurance:

Under the ESI Act, the contribution to ESIC is fixed as a certain percent of 'wages'.

Section 2(22) of the ESI Act defines wages as:

"wages" means all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and] other additional remuneration, if any, paid at intervals not exceeding two months, but does not include—

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;

(b) any travelling allowance or the value of any travelling concession;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(d) any gratuity payable on discharge;

The definition of 'wages' under the ESI Act is wide but it excludes any remuneration that is aid at an interval exceeding two months. Therefore, if the living wage allowance is paid at a quarterly frequency, it would keep that amount outside the ambit of wages and no ESI contribution on that extra amount will have to be made.

6. Payment of Gratuity:

The relevant part of the Act says that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned [section 4(2)].

Section 2(s) defines wages as:

"wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

Thus the definition of wages for the purpose of gratuity is restricted and gives the Brand the freedom to pay living wage allowance without increasing the financial burden on the employer in case the worker retires after the applicable period.

7. Payment of Bonus:

The Payment of Bonus Act requires that a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher must be paid, whether or not the employer has any allocable surplus in the accounting year:

As per section 2(21) of the Act:

"salary or wage" means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include-

(i) any other allowance which the employee is for the time being entitled to;

(ii) *the value of any house accommodation or supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;*

(iii) *any traveling concession;*

(iv) *any bonus (including incentive, production and attendance bonus);*

(v) *any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;*

(vi) *any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him;*

(vii) *any commission payable to the employee.*

Explanation. – Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee;

The definition under the Act excludes a number of items and gives Brand the freedom to pay Living Wage allowance without increasing the Bonus Payment by the employer.

8. Any additional payment to workers should be made after considering the above four contributions/ payments by the employer and operating under the presumption that the objective of the whole exercise is to increase payment to workers (so that they achieve 'living wage') without increasing the financial burden on the employer and to avoid incidence of tax on workers through legally permissible means.

9. It must be clear that PF contribution depends on basic wages, dearness allowance and retaining allowance. PF contribution by employers is an additional financial burden for the employers and they try to keep it to the legal minimum. Believing (genuinely or not, is a separate matter) that the definition of 'basic wages' in the PF Act allowed certain allowances to be excluded from the definition of basic wages, the employers started paying workers a number of different allowances like canteen allowance, leave allowance, dress allowance etc. This allowed them to give workers a wage hike without increasing their (or workers') PF contribution. The Government authority that ensures compliance with the PF Act and has wide ranging powers believed that exempting allowances apart from the ones specifically excluded in the definition as per the Act was nothing but an attempt to camouflage basic wage as allowances to avoid PF contribution and initiated action. The matter went to the Courts and was finally settled in the Supreme Court of India in 2019 (*The Regional Provident Fund Commissioner (II) West Bengal vs. Vivekananda Vidyamandir and Others*) which ruled in favour of the PF authority.

10. After the said ruling, the legal position is as follows:

    a. Those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage.

    b. Where the payment is available to those who avail the opportunity more than others, the amount paid for that cannot be included in the basic wage.

    The second point would cover things like overtime allowance, leave encashment etc.

11. After this ruling by the Supreme Court the proliferation of various types of allowances by employers has stopped. The factories/ employers believe that if living wage allowance is paid to workers under whatever head, for the purpose of PF he will have to consider it as a part of basic wage and consequently its PF contribution will increase.

12. One can still pay an additional amount on a monthly basis and legitimately say that the payment does not fall under point 1 above. For example, paying only those workers that are involved in Brand's production and not across the board (non-universal), or *ex-gratia* (not necessarily) but the downside risk is that if the PF authorities consider it a part of the basic wage, the employer will have to pay the contribution for itself and the workers as well as interest and fine. The other option for the employer would be to challenge the action of the authority in the Courts. Both these scenarios involve additional financial expense on part of the employer and it is likely that the factories/ employers are unwilling to take on the additional financial burden.

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I advice accordingly.

Sincerely yours,

(Name & signature)

(Note: These case studies are only samples and may not be the correct enunciation of law)

LESSON ROUND-UP

- A professional opinion on any subject/ issue/ matter at hand is a written statement by an expert based on giver's professional understanding of that particular aspect of any matter. A person might want to know the correct legal position on a matter of interest or the likelihood of his winning a case if he initiates legal proceedings based on the information that he has supplied to the expert.
- There are 4 types of Legal Opinion i.e. (i) Advices on Transaction (ii) Advices on Law (iii) Opinions on Facts (iv) Advices on Evidence
- The primary purpose of a legal opinion is communication of advice to either a layman or professional client. It is therefore of the utmost importance that it is clear and in plain, understandable English. Every word of the legal opinion should be chosen because it communicates precisely the advice which the writer intends to covey.
- Differences between opinion givers and opinion recipients generally arise over (1) the time and expense required to render an opinion on a matter that is peripheral to the primary concerns of the opinion recipient, (2) the appropriate scope of a particular opinion, (3) whether the opinion will cover matters that are essentially factual in nature, (4) whether the opinion will cover matters about which there is some recognized legal uncertainty, and (5) requests for what historically were referred to as "comfort opinions" but are more properly referred to as "negative assurances.
- The objective of CSAS-3 is to enable the Auditor to lay down the basis and manner for evaluation of the conclusions drawn from the Audit Evidence obtained and express the opinion through written report.

GLOSSARY

Opinion: A document that provides the opinion recipient with the opinion giver's professional judgment about how the highest court of the jurisdiction whose law is being addressed would resolve the issues covered by the opinion letter on the date of the opinion

Expression of the Opinion: Once the facts are organised, a legal framework needs to be constructed into which these facts can be logically slotted. A legal opinion in a personal injury action for example will be based on negligence and therefore will usually be structured along the lines of duty, breach, damages, causation, forseeability and contributory negligence. In a negligence legal opinion it will be vital to assess the level of damages that the client can expect to receive or pay out.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. What are the types of Legal Opinion?
2. Explain Form and Elements of the Opinion Letter?
3. What are the things to be kept in mind while preparing for opinion letter?
4. Define Company Secretaries Auditing Standard (CSAS-3). What is the Process of forming an opinion under CSAS-3?
5. Draft a Specimen on Opinion.

LIST OF FURTHER READINGS

- Chartered Secretary, The ICSI
- Articles written by professionals

OTHER REFERENCES (Including Websites / Video Links)

- https://www.icsi.edu/home/cs/

Commercial Contract Management

Lesson 8

KEY CONCEPTS

■ Commercial Contracts ■ Injunction ■ Contract Management ■ Liquidated damage ■ Quantum *meruit* compensation

Learning Objectives

To understand:

- ➢ Strategies for making best commercial and operational Negotiation terms with vendor
- ➢ Generation, examination and implementation of contracts
- ➢ Documents and communications relating to the Contract
- ➢ Preservation of Contract documents
- ➢ Compliance with compulsory provisions
- ➢ Contract Tracking for Renewals, Extension and Closure
- ➢ Keeping and building healthy relationships with vendors, clients
- ➢ Controlling Contract modification over any charges for services out of the scope of the contract
- ➢ Actions for violation of contracts

Lesson Outline

- ➢ Introduction
- ➢ Business/Commercial Contracts: A brief
- ➢ Negotiation of best commercial and operational terms with Vendor
- ➢ Create, Analyse and Execute Contracts
- ➢ Contract related Documents and Correspondence
- ➢ Maintenance of Contract Documents
- ➢ Compliance with Laws
- ➢ Tracking of Contracts and extend, renew and close
- ➢ Build and maintain relationship with Vendors, Clients
- ➢ Control over any charges for services out of the scope of the Contract
- ➢ Action in case of Breach of Contract
- ➢ Lesson Round-Up
- ➢ Glossary
- ➢ Test Yourself
- ➢ List of Further Readings
- ➢ Other References (including websites/video links)

INTRODUCTION

"Until the contract is signed, nothing is real. -- Glenn Danzig"

Contracts are an essential deep rooted in civilized society and have gradually become an indispensable part of our lives. Right from buying milk and bread in the morning till ordering online food for dinner, all are one or other forms of contract. Though in personal life, we instinctively enter into various contract and/or agreement, yet in commercial world, these contracts are quite significant and forms an integral part for the success of the business. Considering the significance of contract and necessity of its enforcement, law of contract is well established in the jurisdiction. In India, *inter-alia*, there is Indian Contract Act, 1872 and other legal provisions, which substantiate contracts and its enforceability more specifically for the growth of business. Moreover, it is important to note that only those agreements which qualify as contacts under the Indian Contract Act, 1872 are enforceable, therefore, it becomes imperative to understand the conditions for enforceability of a contract and what general and special conditions a commercial contract can carry. Accordingly, this lesson *inter-alia* aims to understand the criteria of valid contract along with the general and special conditions surrounding its enforceability.

Nature of Contract Law

The Law of Contract confines itself to enforcement of voluntarily created civil obligations. The essence of the nature of law of contract has been summarized perfectly by Anson in the following words, ***"Law of contract is that branch of law which determines the circumstances in which a promise shall be legally binding on the person making it".***

To state succinctly, it can be said in simple words that law of contract ensures that whatever has been agreed upon between the parties, that contract must be executed. For example, A says, 'I want to sell my watch for Rs. 10,000/-'. B says, 'Okay, I will buy your watch for Rs.10,000'/-'. The moment B agrees to buy the watch at the quoted price, a contract arises. Now, if any party refuses to perform the contract, it results into a breach of contract and here, the law of contract comes into picture and provides what can be done by the aggrieved party. Therefore, it can be understood that the Indian Contract Act, 1872 looks into the enforcement part of the contract and does not specify the terms and conditions that should be agreed upon. The parties enjoy the freedom to choose terms and conditions advantageous to their interests while entering into the contract. This is called 'freedom of contract'. The law of contract merely lays down the circumstances in which a promise made by a person is legally binding.

Meaning and Definition of Contract

As per Britannica dictionary, a contract, in the simplest definition, a promise enforceable by law. The promise may be to do something or to refrain from doing something. The making of a contract requires the mutual assent of two or more persons, one of them ordinarily making an offer and another accepting. If one of the parties fails to keep the promise, the other is entitled to legal redress. The law of contracts considers such questions as whether a contract exists, what the meaning of it is, whether a contract has been broken, and what compensation is due to the injured party.

As per Merriam Webster, a contract is a binding agreement between two or more persons or parties.

As per section 2 (h) of Indian Contract Act, 1872 – a contract is "an agreement enforceable by law". In other words, we can say that a contract is anything that is an agreement and enforceable by the law of the land. This definition has two major elements in it viz – "agreement" and "enforceable by law". So, in order to understand a contract in the light of The Indian Contract Act, 1872 we need to define and explain these two pivots in the definition of a contract.

In section 2 (e), the Act defines the term agreement as "every promise and every set of promises, forming the consideration for each other".

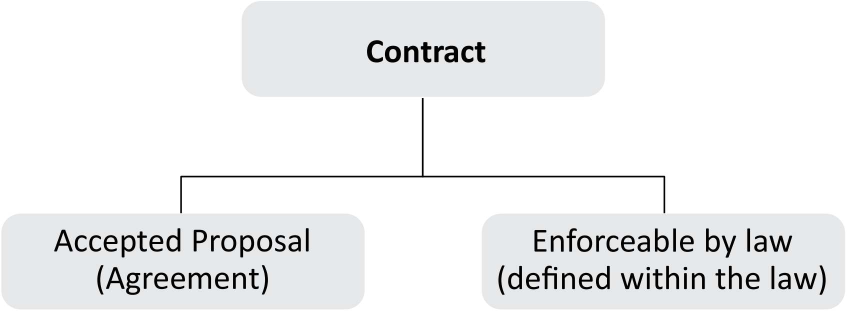
The Act in its section 2(b) defines the term “promise” as: “when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted, becomes a promise”. In other words, an agreement is an accepted promise, accepted by all the parties involved in the agreement or affected by it. This definition says that in order to establish or draft a contract, we need to initiate some steps:

The person (parties) in step one must be in a position to fully understand all the aspects of a proposal.

“signifies his assent thereto” – means that the person in point one accepts or agrees with the proposal after having fully understood it.

Once the “person” accepts the proposal, the status of the “proposal” changes to “accepted proposal”.

“accepted proposal” becomes a promise. *Note that the proposal is not a promise. For the proposal to become a promise, it has to be accepted.*


Contract
Accepted Proposal (Agreement)
Enforceable by law (defined within the law)

Under the above backdrop, we can summarize as below:

Purpose of Contract

The main purpose of a contract is to formalize new relationships and outline various legal obligations each party owes to the other. Presently, most contracts are agreed between businesses as well as individuals. Whilst individuals will sign basic contracts occasionally - to sell a house, or accept a job offer - businesses sign legal agreements in the masses, with partners, customers, and suppliers. The truth is, contractual agreements form the backbone of every commercial relationship.

There is immense significance of contracts both in professional as well as personal sphere. Some key points highlighting the significance of contracts are enumerated below:

Avoids Misunderstanding and legal disputes (Impact on business)

Misunderstanding is a common problem confronted in any business due to several reasons. To avoid such cases, drafting a contract is important and it is required for both parties to read the consented rules and abide by them. It has a large impact on the business as breaching the clauses of the contract can lead to conflicts between the parties and thereby affect the business overall. Therefore, contracts in business are important.

Acts as a Record of the Business (Impact on business)

A written contract acts as a record of the terms and conditions agreed upon between the parties and listed in the agreement. It can be used for future reference and, comprises information regarding the stipulated delivery timeline of any work assigned as per contract. The tenure of the contract is also highlighted in the agreement, which provides more clarity regarding the termination details. However, the contract may be terminated in the worst case if the other party is not willing to comply with the terms mentioned in the contract or attempts to bypass the terms of the contract.

Evidence in Court of Law

The contract can act as legal evidence if a party files a case against the other in the event of breach of contract.

Increases Operational Efficiency

Contracts are essentially binding agreements that state the obligations of each party, for example, that one side will deliver goods and services for a certain consideration by the other side. A contract in which all relevant terms like delivery time, duration of contract, terms of payment, dispute resolution, quality standards etc. are sufficiently laid down, will help businesses to operate efficiently and leaves out any scope for grey areas.

It is important to understand that a blockade in a contract is equivalent to a blockade in revenue. Conversely, a well-drafted contract leads to a smooth flow of operation and hence easily helps to generate revenue. In addition to this, contracts are easier to manage and are comprehensive. This helps the business operation to save up a lot of revenue that can be diverted to more productive means.

Proof of Details (Impact on business)

The prime purpose of creating a contract is related to the recording of details, which both parties have agreed with mutual consent. It provides a precise knowledge of the services provided by the third party or monetary expectations to be met by the person. These details then serve as reference points which are adhered to by the parties in all circumstances, so as to avoid breach of contract. It also eliminates discussion on different aspects of a project, as all details are encapsulated in the contract in the beginning itself.

Provides Security (Impact on business)

A contract plays a pivotal role in making the parties secure as it clearly specifies the tenure of the contract and set of responsibilities. Here, an employer is lawfully responsible to pay the committed salary on time and the employee is responsible to perform his duties as designated. Any deviation is considered contract breaching and, either of them has the sole rights to take appropriate action. Therefore, it is pivotal to understand the importance of law of contracts.

Provides Confidentiality

Most commercial contracts include an NDA (Non-disclosure Agreement), clause, which protects confidential information and prevents parties from disclosing confidential information to outsiders. For example, most business organizations require their employees to sign a NDA to protect employer’s confidential business information. According to this agreement, concerned parties are not entitled to reveal the business and monetary transactions between them with any third person. In case of disclosure, either of them will be subjected to penalty as per the terms of contract, enforced by the law legally.

Prevents Conflicts and Minimizes Risk

Contracts detail down each party’s responsibility. This leads to clarity between the parties and better understanding so as to serve the purpose of the contract better. Conflicts in a business are undesirable as they exploit resources that could have otherwise been used to increase productivity.

Record of Commitment

Contracts represent the relationship one party enters with the other. Each party has certain responsibilities and enjoys certain rights towards the other. A contract is a visual record of this relationship.

In addition to this, contracts also minimize the risk involved by detailing out the extent of one’s liability in case of failure to perform/adhere to the contractual obligations. For example- a contract may limit one’s liability and save his/her personal property from being liquidated to pay off the debt in case of dissolution of business.

BUSINESS/COMMERCIAL CONTRACTS: A BRIEF

A commercial contract forms an integral and critical part of any business venture, as such arrangements detail the rights and obligations, commercial terms discussed and agreed upon between the parties including recourse in case of any dispute. Additionally, commercial contracts are documents that cover a combination of legal and commercial factors. To be concise, commercial contracts define and regulate business relationships, be it a standard employment agreement or more complex agreements like merger and acquisition contracts. In its simplest form, a commercial contract is a legally binding agreement between two or more parties. Commercial contracts are most often written documents. Commercial contracts spell out exactly what each party must do for the contract to remain legitimate, as well as the consequences in case any of the terms and conditions are not followed. It's for the companies and organizations, and one of its main requirements is that legal agreements enable the contract's maximum benefits to be realized. Therefore, it is extremely crucial to ensure that the terms mentioned in the contract are drafted in a proper manner that protects the interests of the parties to the contract. Commercial contracts are primarily governed by the Indian Contract Act, 1872 and; the Specific Relief Act, 1963 ("SRA").

The Indian Contract Act, 1872 lays down the foundational principles and grounds which are necessary to claim damages and indemnity from a defaulting party in case of breach or violation of any provisions or obligations under the contract. On the other hand, the SRA provides for remedies to persons whose contractual rights have been violated such as the recovery of possession of the property, specific performance of the contracts, rescission of contracts, rectification of instruments etc.

NEGOTIATION OF BEST COMMERCIAL AND OPERATIONAL TERMS WITH VENDOR

Negotiation is a skill that can benefit entrepreneurs every single day, whether they're dealing with vendors or landlords, employees or clients. Negotiating with vendors is vital for overall improving vendor contract. The negotiation process can help you understand the needs of each party and determine a contract that benefits both sides of the transaction. From interest to length of contract to payment terms, a vendor contract is made of many facets that can be negotiated. One can negotiate with potential suppliers as well as existing vendor contracts, provided one follows the effective and result driven negotiation. The steps involved in negotiation of best Commercial and Operational terms with Vendor include:

1. **Prepare a Plan:** It is always beneficial to prepare a plan before starting the negotiation process. A plan inter alia should include Services or products that can be offered or to be purchases or availed, Payment Terms, Time required for finalization, Cancellation clauses, Penalties including late penalties etc.
2. **Finalise the communication system:** Frequent communication can be said to be starting point of the trust in negotiations. Every effort should be made to observe and fulfil whatever has been committed. The response is one another important area that can enhance the trust of other party. Timely response is also beneficial. Single point of contact is one other aspect that gives an added advantage. Further, vendors sending personal communication are generally open to negotiations as against Bulk Messages.
3. **Offer competitive Prices:** Proper research should be done before finalizing the prices of products or services. The prices of similar or competitive products should be studied before offering a price to the customers.
4. **Respect the experience of the other Party and help them:** Treat the other party as an expert in their area. Try to learn from them. It can prove to be beneficial if you express that you are looking for long associations and you are also interested in the growth of their businesses. Further, it should be demonstrated that how you can help them in growing their businesses.
5. **Be open for the competition:** You may be sure which vendor you prefer but it is better to obtain the

quotes from various vendors also. This activity can keep the prices in control. When you are taking the quotes, try to take the quotations for different quantities for the purpose of evaluation and finalization of quantities to be ordered. So that you will be able to purchase the quantity which is most beneficial to you.

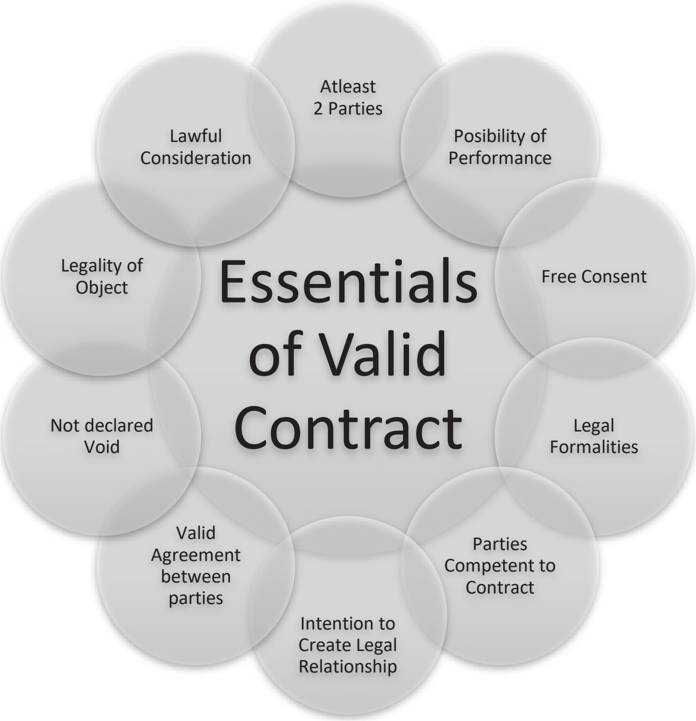
6. **Different aspects may be explored**: In certain situation, you may find a vendor who is not ready to negotiate the prices of the product or services. It does not mean that there is no scope of negotiation. Other aspects such as Payment terms, Interest, discounts etc. may still be negotiated.
7. **Deposits:** Vendors are providing their product and services to you in anticipation of the payments within time. However, there may be doubt about the timely payments in their minds. Therefore, deposits can build trust and confidence for you amongst the Vendors.
8. **Win-Win solution:** While negotiating try to suggest the option which is beneficial for both the parties. Working on a Win-Win situation can make you a preferred party.

CREATE, ANALYSE AND EXECUTE CONTRACTS

Creations of the Contracts: Essentials of a Valid Contract

Indian Contract Act, 1872 stipulates the conditions that are essential to ensure the validity of a contract which includes,

- offer and acceptance;
- intent of the parties;
- lawful consideration;
- parties competent to contract, and
- free consent.


Essentials of Valid Contract
Atleast 2 Parties
Posibility of Performance
Free Consent
Legal Formalities
Parties Competent to Contract
Intention to Create Legal Relationship
Valid Agreement between parties
Not declared Void
Legality of Object
Lawful Consideration

Good Contract: Analysis

Contracts gain such vital importance in our lives because they legally bind the parties in a legal relationship. Any breach of a contract can be redressed, and the damages can be liquidated. Besides the basic feature, the contract also contains other vital legal aspects that boost the relationship between parties.

In general, a good contract is understandable and unambiguous. Contracts that clearly state their terms and conditions are preferred over contracts that are vague. All relationships require clear communication for healthy continuation and so do business relations. Contracts serve as an efficient communication tool that ensures that the relationship is a healthy one.

Contracts are by nature collaborative and relational. By clearly stating the important clauses for the parties they lead to transparency which enhances communication. A contract with convoluted language and imprecise terms is likely to cause a great deal of confusion between the parties. Further, well drafted contracts clearly capture the obligations of the parties. If a party tries to back out of its obligations, it can cause problems in the relationship. Hence, a good contract cuts down the likelihood of a breach.

A well-drafted contract is likely to state every detail and the extent to which the parties are bound to each other. A contract defines the relationship between the parties. If a party breaches the obligation to which it is committed, the other party can approach the court.

A contract states the:

- The goal or objectives that the parties intend to achieve through the transaction.
- The scope of work to be performed by the contracting parties.
- In case of a specific purpose, the description of specific purpose to be achieved.
- The consideration agreed to be paid and terms of payment.
- The indemnities which each party would give the other as applicable.
- The limit of the liability of each person *vis-a-vis* the other party or a third party.
- Grounds of termination of the contract.

In addition to well drafted and unambiguous contracts, a good contract also captures the legal essentials like jurisdiction, governing law, arbitration, etc. to make them enforceable in accordance with the object and intent of the contract.

General and Special Conditions of a Contract

The general terms of the contract refer to the basic contractual stipulations such as duration of contract, indemnity, penalty clause, etc. which are found in all types of contracts whereas the special conditions/terms of the contract refer to those stipulations which are specific to the parties or the business being transacted between them and cater to their individual and collective requirements, for example, specific obligations of each party under the contract, assignment etc. It is always imperative that general and specific terms are captured clearly in contract. This does not only makes the agreement effectively enforceable but also minimizes the risk of dispute between the parties.

General Conditions

The general terms and conditions of the contract include but not limit to the following:

1. **Legal Status of the Parties**

   This clause deals with the legal status and nomenclature of the parties entering into the contract.

2. **Definitions**

Definition clause is an important clause in a contract. It defines all the important and capitalized terms in a contract. It majorly aims to capture the intent of a capitalized term used in a contract.

3. **Interpretation Clause**

A good contract always captures a general interpretation clause, which clarifies the intention of some general terms used in the agreement. For example, ‘he’ includes she and alike.

4. **Object/ Scope of Work and/or Services**

This is one of the important clauses in a contract. It captures the scope of work/object for which the contract is being entered upon between the parties.

5. **Representations and Warranties**

In this clause, parties represent and warrants certain factual details, which forms the integral part of the contract and basis which parties are acting upon the contract.

6. **Contractual Period**

This clause defines the term of the contract. A good contract also captures the renewal of term and the conditions of such renewal.

7. **Fees and Taxes**

Consideration is a valid essential of the contract. Hence this clause captures the fees and taxes mutually decided for the scope of work of that contract.

8. **Payment Method**

Apart from consideration for a contract, it is also vital to clearly capture the method vide which the fees and commercials of the contract shall be paid.

9. **Commencement Date**

This clause identifies the effective date of the contract on which the rights and obligations of the parties shall take effect.

10. **Rights and Obligations of the Contractual Parties**

This clause specifies the rights and obligations of the contractual parties.

11. **Termination of Contract**

This clause describes the process of termination of contract, in case any party wishes to terminate the contract before it expires. It also identifies the events which will cause the contract to terminate by either of the parties.

12. **The Right of Withdrawal from the Contract**

This clause covers a situation of withdrawals by any party to the contract; in case they wish to withdraw from few obligations of the contract.

13. **Disclaimer of Warranty**

Vide this clause, parties disclaim certain warranties.

14. Indemnification

This clause states the obligations of the parties to indemnify other party, hold and save harmless, and defend, at its own expense, from and against all suits, claims, demands, and liability of any nature or kind, arising out of acts of omission of the indemnifying party.

15. Limitation of Liability

This clause limits the liabilities of the parties, i.e. limits the amount of money or damages that a party will have to pay in case of breach of contract or performance failure.

16. Confidentiality

When two or more parties enter into a contract, there will almost certainly be a considerable number of details exchanged for all parties to fulfil their contractual obligations. Given the necessity of providing some details about each party's financial and business practices, the contract must have a strict confidentiality clause. This provision should prohibit all parties from disclosing any and all information exchanged during the transaction. Of course, where valuable intellectual property is at stake, this clause especially important.

17. Force majeure/Mitigating Factors

The term "Force Majeure" simply means "greater factor". This clause should be included in all commercial contracts because it can shield parties from events that are beyond their control. For example a shipping schedule could be unavoidably interrupted in the event of a natural disaster such as an earthquake or hurricane. In general, the term "force majeure" is very broad, and many contracts have clauses that cover items like terrorist attacks and even acts of God. This provision is necessary to ensure that any failure to perform as a result of an unforeseen interruption is not considered as breach of contract and thus, a defaulting party which is unable to perform the contract due to unforeseen circumstances is saved from potential liability.

18. Jurisdiction

Cross-border transactions are quite common these days, both domestically and internationally. When the parties to a contract are from different states, or even different countries, it can be difficult to determine which state's laws apply to the contract. As a result, commercial contracts should always state which the laws of which country will have authority to deal with the subject matter of contract in case of dispute, so that the relevant laws are clear.

19. Dispute Resolution

Even the most carefully written contracts cannot prevent possibility of dispute. As a consequence, it's important to understand the parties' strategies for resolving disputes in the event that one occurs. Parties are increasingly using a provision for arbitration in their contracts, forcing the parties to agree to arbitration before or in lieu of finding a settlement through litigation. While some contracts do allow for conventional legal redress, arbitration is a quicker way to resolve contract-related issues. It is important to note that arbitration is an alternate dispute resolution mechanism whereby a neutral third person, who is qualified to be appointed as an arbitrator, decides the dispute and passes a legally binding award in a time bound manner.

20. Damages

Due to high level of contract violations and the need to prevent them, it is also common practice for commercial contracts to include clauses covering damages. Liquidated damages clause, which provides a fixed sum which a party is liable to pay on failure to perform, is used in most contracts. Depending on the extent and effect of the violation, a court can award other forms of damages in addition to that amount.

21. **Entire Contract and Precedence in case of inconsistency clause**

Special Conditions

As the name suggests, special conditions are special as per the nature of the contract. These conditions cannot be common for all the contracts. Few instances of special conditions are as follows.

- Sub-Contracting
- Assignment
- Additional Scope of Work
- Alternative Dispute Resolution
- Data Deletion and/or Data Purging Clause
- Privilege and Immunities
- Tax Exemption
- *Choice of Law.*

Execution of Contracts

The process of contract execution involves a process whereby the parties to the contract sign the agreement, after which it becomes a legally binding contract. Unfinalized contracts turn out to be ineffective. The agreement cannot be enforced in court if this is the case. If the contract isn't properly executed, all the hard work will be for nothing. Costly litigation can result in severe financial losses, lost value, and lost resources. After a contract is executed, no changes can be made to the contract language.

CONTRACT RELATED DOCUMENTS AND CORRESPONDENCE

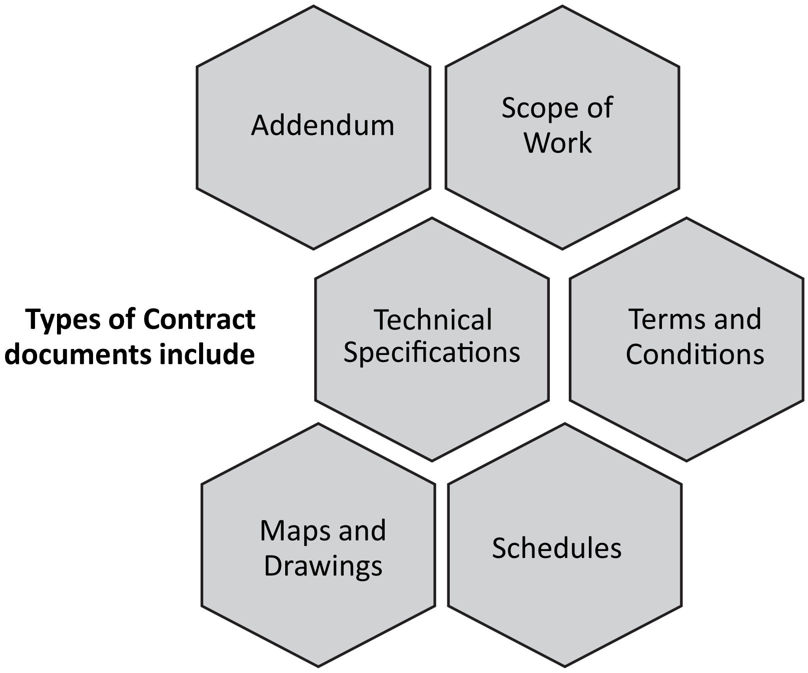
Almost all the well drafted contracts keep the following clause in the contract:

"Documentation and Correspondence. All documentation and correspondence to be delivered between the Parties pursuant to this Agreement shall be in the English language."

The clause itself confirms that there are plenty of correspondence and documents in a contract and each and every such documents and correspondence are vital to the contract. Hence this section deals with the common documents and correspondence related to a contract.

"Contract documents" are the documents which constitutes the whole of the Agreement. The contract document includes terms and conditions agreed between the parties as well as Right and Duties of the Parties.

Different Types of Contract documents



MAINTENANCE OF CONTRACT DOCUMENTS

Many people who have wasted their time in search of specific document can only understand the value of documents management. Document Management in itself is important but when it comes to Contracts, it becomes much more important as the Contracts are the evidences of Rights and Obligations of the parties. Sometimes, the amount involved is huge. Therefore, Contract Management should be carefully taken care of. It also involves organizing and tracking documents.

Maintenance of contract documents means creating and maintaining accurate records of all communications and correspondence with contracting parties. It may or may not involve involves monitoring compliance with contract terms and keeping track of any changes or amendments that need to be made.

Document Management simply means organize and Store a particular document in such a manner that it can be made available as and when required by use of minimum efforts and with convenience.

Types of Maintaining Contract Documents

Document management is the process of sourcing, organizing, storing, and analyzing documents. When it comes to document management, there are two main types of systems: (a) manual and (b) electronic.

(a) A manual document management system (DMS) is controlled by humans. This could involve a physical filing system where employees manually file documents or an online system where employees enter data into a database.

(b) An electronic document management system (EDMS), on the other hand, is a system that is controlled by computers. This could involve an online system where employees access files remotely or an offline system where employees download files to their computers.

COMPLIANCE WITH LAWS

It is a well settled principle of law that no contract between the parties can oust the application of law. In short, every contract is subject to applicable laws and parties to the contract are bound to comply with the laws applicable on them as well as on transaction. In almost all the contracts, there is a clause confirming compliance with laws.

The laws which are generally required to be complied includes the following:

1. Indian Contract Act, 1872
2. Indian Stamp Act, 1899
3. Registration Act, 1908

However, in specific case the following laws ***inter alia*** are also required to be complied with:

1. Powers-of Attorney Act, 1882
2. Sale of Goods Act, 1930
3. Transfer of Property Act, 1882
4. Arbitration and Conciliation Act, 1996
5. Specific Relief Act, 1973

However, this list is not exhaustive. Many other laws may also be applicable along with the Law of Contracts.

TRACKING OF CONTRACTS AND EXTEND, RENEW AND CLOSE

Contract tracking is the process whereby stakeholders in the contract lifecycle (particularly in legal or compliance) are able to know where a contract is alive or not, without having to investigate across multiple systems.

There are various stages of the Contract. These stages starts from preparing the draft documents to Performance, renewal, termination and closure of the Contract. The stages of the contacts can be summarized as below:

Preparation of the Draft

Negotiating and Finalising the terms and conditions of the Contract

Signing of the Contract

Storage of the Contract

Work Execution or performance as agreed in the Contract

Making Payments

Renew or Closure of the Contract

Each stage requires different actions therefore it is necessary to keep a track of the contract documents. For example: Stamp duty should be paid before signing and registration after the signing of the contract, Awarding of Purchase Order during active life of the Contract, Renewal (if required), etc. Therefore, tracking at every stage is required. This tracking can be done manually or with the help of Contract Management Software. All what is required to keep the track and take necessary action within the timelines. If necessary action has not been taken in time, a contract can give rise to a huge burden on a party. For example: Working under an expired contract can hinder and create difficulty while enforcing the payment terms against the other party.

Rules for tracking of Contracts for Renewal, Extension and Closure

1. **Storage of Contract:** The storage of contract should be in a place where they are kept in safe custody and try to keep a copy of the Contract document readily available. In case, the number of contracts are on a higher side, online systems can be of great help.
2. **Arrange for the systems of reminders:** Systems should be made in such a manner that ensuing activity is notified to the user well in advance in order to take necessary action.
3. **Classifications:** Classifications of documents be made for the purpose of taking special care of the contracts whose stake are high and margin of error is very low. This will ensure timely action in case of important contracts.
4. **Inform Stakeholders in advance:** Every organization have their own processes, long or short. Many a times, the authorities of various executives are also derived from their senior authority. For example: The Board Directors may authorize Company Secretary to execute contract on behalf of the company or Managing Director authorizing the Finance head for signing and executing the contract on behalf of the Company. Therefore, it is advisable, to give enough time to the other party for taking necessary approvals from their appropriate authority also to keep sufficient time for taking necessary approvals in your company.

BUILD AND MAINTAIN RELATIONSHIPS WITH VENDORS, CLIENTS

The following is the inclusive list of actions that can prove to be beneficial for building and maintaining good relations with vendors and clients:

1. **Maintain Proper Communication:** Various communications are required to be made to vendors and clients during a project. It is advisable to communicate with the client or vendor and inform him/her the required course of actions in advance. However, special care must be taken to ensure that an individual client should not intrude on your personal time or negatively affect your productivity.
2. **Effective Communications:** Clear and regular communication with the client or vendor can prove to be beneficial for maintaining good relationship. It will positively impact your relationship with the vendors and clients and their trust on you can be enhanced.
3. **Individuals Communications:** It is advisable to address the vendor/client as an individual. Bulk messages are generally not liked or preferred by individuals. Sometimes personal greetings and wishes can also be beneficial for maintaining good relationship with the Vendors and Clients.
4. **Opinion Sharing:** You can share your opinions about the businesses of your clients or vendors and also suggest improvements. However, it must be noted that the client or vendor may or may not accept your opinion.
5. **Do more than expected:** The clients or vendors appreciate when they are delivered more than what they have expected. An extra step from you can increase your trust amongst clients and vendors.
6. **Be ready for the Change and adjust your work processes:** If a particular clients and vendors is

important for your business, you have to be ready for the changes that are acceptable. However, cost-benefit analysis should be done before accepting any change request from vendors or clients. The cost should not too excessive for your business processes.

7. **Ask for Feedback:** Asking for the feedback from your vendors and clients can have positive impact on you businesses. Feedbacks systems are good tool to increase trust in business relationships. Constructive feedbacks can also prove to be a beneficial factor for professional growth.

CONTROL OVER ANY CHARGES FOR SERVICES OUT OF THE SCOPE OF THE CONTRACT

The goods or services which are subject matter of a Contract are to be supplied or provided according to the terms of Contract. However, due to the circumstances (Bonafied or Malafied), some goods or services are provided that are out of the Scope of the Contract. In these circumstances, the parties may agree these out of scope transactions. But, the parties should evaluate the change to the transaction and its financial impact on them.

The parties should also assess relevant facts and situation and decide whether to approve or reject the transactions that are out of scope of Contract. If the parties approve these transactions, no further liability arises but, if these transactions are rejected or challenged, the circumstances can give rise to individual liability for those who were at fault.

In another situation, there may arise circumstances which were unseen at the time of signing of Contract. In this situation, parties should agree to circumstances which have arisen later in front of the parties. However, if it is not possible to obtain the consent of the other party, the matter can be dealt according to the Principle of ***Quantum Meruit***.

Charges/Payment of Services – Outside the Scope of the Contract: Indian Legal Perspective

"***Quantum Meruit***" loosely translates to 'as much as one deserves'. It means something that has been earned. A ***quantum meruit*** claim arises, where work is done or services rendered by one party for the other, in circumstances which entitle the party doing the work or rendering the services to receive a reasonable additional remuneration, the situation being one where either there is no contract or there is a contract but the particular situation is not covered under that contract.

The compensation under the principle of *Quantum Meruit* is allowed in the courts under Section 70 of the Indian Contract Act, 1872. A claim for compensation by one against another under Section 70 of the Indian Contract Act, 1872 is not based on any subsisting contract between the parties. Rather, its basis is that something has been done by one party for the other, non-gratuitously, which the other party had accepted voluntarily. It covers a situation where there is no agreement at all.

However, three conditions need to be fulfilled before the benefit of this section can be invoked by a person. The three conditions under section 70 of Indian Contract Act, 1872 are as follows:

- **Lawful:** The first condition is that the claimant should either lawfully do something for another person or deliver something to him.
- **Non-Gratuitous Transaction:** The second condition is that while doing or delivering something, the claimant must not be acting gratuitously and
- **Enjoyment by the second party:** Thirdly, the person for whom something is done or to whom something is delivered must enjoy the thing done for or delivered to him as the case may be.

The basis of quantum meruit equitable considerations. This is often described as "restitution for quasi-contract". However, the facts necessary for exercising this jurisdiction must be proved by the claimant.

In ***Matheson v. Smiley (1932, Canada)***, a surgeon who intended to charge his fees made an attempt to save life of a person who committed suicide but was not successful in saving him, was held entitled to remuneration for his professional services.

The case of ***Alopi Parshad and Sons Ltd. v. Union of India*** decided by the Hon'ble Supreme Court may be referred for better understanding and applicability of the Principle of Quantum Meruit. In this case the Supreme Court held that:

"Compensation under quantum meruit is awarded for work done or services rendered, when the price thereof is not fixed by a contract. For work done or services rendered pursuant to the terms of a contract, compensation quantum meruit cannot be awarded where the contract provides for the consideration payable on that behalf. Quantum meruit is but reasonable compensation awarded on implication of a contract to remunerate, and an express stipulation governing the relations between the parties under a contract, cannot be displaced by assuming that the stipulation is not reasonable."

In the case of *Mulamchand v. State of M.P.*, the Supreme Court held that, if a claim for compensation is made by one person against another person under Section 70 of the Indian Contract Act, 1872, it cannot be on the basis of any existing construction contract between the parties but on the basis different kinds of obligations.

ACTION IN CASE OF BREACH OF CONTRACT

Breach of contract occurs when a party renounces from his liability under the contract without any legal justification. Chapter VI (Section 73 to 75) of the Indian Contract Act, 1872 deals with the consequences of breach of the contract.

Section 73 – deals with compensation for loss or damage caused by breach of contract

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him, which naturally arose in the natural course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Damage is a disadvantage suffered by a person as a result of the act or default of another. Damages are the pecuniary recompense given by process of law to a person for the actionable wrong.

No compensation shall be given to any remote and indirect loss or damage sustained by reason of breach.

Compensation for failure to discharge obligation resembling those created by contract. – When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation. – In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

An uncommonly known fact is that Section 73 is based on a case law, i.e., *Hadley v. Baxendale (1854) 9 Ex. 354*. In ***Hadley v. Baxendale,*** the mill of the Plaintiff (aggrieved) came to a standstill due to the delay on part of Defendant to send the repaired crankshaft back to the mill. In ordinary circumstances, a mill will not stop functioning in absence of one crankshaft. This was a special circumstance which was required to be communicated to the Defendant. Hence, the Defendant was held not liable for the loss suffered by the Plaintiff.

As per the abovementioned case, special damages can be awarded only when such circumstances were in the "contemplation of parties". The well-known rule in this case was stated by the Court as follows:

"*Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be either such as may reasonably and fairly be* *considered as arising naturally, i.e., according to usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it."*

Illustration to section 73

(a) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo, which A is to provide, and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freights rise, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(k) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(l) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day, B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(q) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r) A, a ship-owner, contracts with B to convey him from Calcutta to Sydney in A's ship, sailing on the first of

January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being in consequence detained in Calcutta for some time and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Section 74: Compensation for breach of contract where penalty stipulated for

When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation. – A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception. – When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation. – A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations to section 74

(a) A contracts with B to pay B Rs. 1,000, if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(b) A contracts with B that, if Apractises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation; not exceeding Rs. 5,000, as the Court considers reasonable.

(c) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

(d) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e) A, who owes money to B a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

(f) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments, with a stipulation that in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs.

40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

Section 75: Party rightfully rescinding contract, entitled to compensation

A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration to section 75: A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

A Decree for Specific Performance

According to section 10 of Specific Relief Act, 1963, the specific performance of a contract shall be enforced by the court subject to the provisions contained in section 11(2) relating to contract made by a trustee in excess of his powers or in breach of trust, section 14 relating to Contracts not specifically enforceable and section 16 relating to Personal bars to relief.

Section 12 bars the courts to grant relief of Specific performance of part of contract, other than on the grounds mentioned in this section. The Grounds are as under:

1. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed be a only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

2. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either –

   (a) forms a considerable part of the whole, though admitting of compensation in money; or

   (b) does not admit of compensation in money;

   he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party –

   (i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b) pays or has paid the consideration for the whole of the contract without any abatement; and

   (ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

3. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

Explanation. – For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject-matter existing at the date of the contract has ceased to exist at the time of its performance.

An Injunction

Injunction (or "stay order" in common parlance) is a preventive relief under the Specific Relief Act, 1963 whereby a court issues a direction to do or not to do a certain act. The law relating to injunctions in civil matters is dealt with under Section 36-42 of the Specific Relief Act, 1963 and Order XXXIX of the Code of Civil Procedure, 1908. An injunction is defined as an order of a competent court, which:

(i) Forbids the commission of a threatened wrong,

(ii) Forbids the continuation of a wrong already begun, or

(iii) Commands the restoration of the *status quo* (the former course of things).

Clauses (i) and (ii) deal with preventive relief, whereas clause (iii) deals with an injunction called mandatory injunction, which aims at rectifying, rather than preventing the defendant's misconduct.

According to section 36, Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual. However, section 39 further provides for the provision relating to Mandatory Injunctions. These injunctions are explained as under:

1. **Temporary Injunctions:** Temporary injunctions are such as are to continue until a specific time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908.
2. **Perpetual Injunction:** A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.
3. **Mandatory Injunction:** When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

LESSON ROUND-UP

- Contracts are an essential deep rooted in civilized society and have gradually become an indispensable part of our lives. Right from buying milk and bread in the morning till ordering online food for dinner, all are one or other forms of contract.
- The main purpose of a contract is to formalize new relationships and outline various legal obligations each party owes to the other.
- A commercial contract forms an integral and critical part of any business venture, as such arrangements detail the rights and obligations, commercial terms discussed and agreed upon between the parties including recourse in case of any dispute.
- Negotiation is a skill that can benefit entrepreneurs every single day, whether they're dealing with vendors or landlords, employees or clients. Negotiating with vendors is vital for overall improving vendor contract. The negotiation process can help you understand the needs of each party and determine a contract that benefits both sides of the transaction. From interest to length of contract to payment terms, a vendor contract is made of many facets that can be negotiated.

- Contracts gain such vital importance in our lives because they legally bind the parties in a legal relationship. Any breach of a contract can be redressed, and the damages can be liquidated. Besides the basic feature, the contract also contains other vital legal aspects that boost the relationship between parties.
- Many people who have wasted their time in search of specific document can only understand the value of documents management. Document Management in itself is important but when it comes to Contracts, it becomes much more important as the Contracts are the evidences of Rights and Obligations of the parties. Sometimes, the amount involved is huge. Therefore, Contract Management should be carefully taken care of.
- Document management is the process of sourcing, organizing, storing, and analyzing documents. When it comes to document management, there are two main types of systems: (a) manual and (b) electronic.
- It is a well settled principle of law that no contract between the parties can oust the application of law. In short, every contract is subject to applicable laws and parties to the contract are bound to comply with the laws applicable on them as well as on transaction. In almost all the contracts, there is a clause confirming compliance with laws.
- Contract tracking is the process whereby stakeholders in the contract lifecycle (particularly in legal or compliance) are able to know where a contract is alive or not, without having to investigate across multiple systems.
- The goods or services which are subject matter of a Contract are to be supplied or provided according to the terms of Contract. However, due to the circumstances (Bonafied or Malafied), some goods or services are provided which are out of the Scope of the Contract.
- Breach of contract occurs when a party renounces from his liability under the contract without any legal justification. Chapter VI (Section 73 to 75) of the Indian Contract Act, 1872 deals with the consequences of breach of the contract.
- According to section 10 of Specific Relief Act, 1963, the specific performance of a contract shall be enforced by the court subject to the provisions contained in section 11(2) relating to contract made by a trustee in excess of his powers or in breach of trust, section 14 relating to Contracts not specifically enforceable and section 16 relating to Personal bars to relief.
- Injunction (or “stay order” in common parlance) is a preventive relief under the Specific Relief Act, 1963 whereby a court issues a direction to do or not to do a certain act. The law relating to injunctions in civil matters is dealt with under Section 36-42 of the Specific Relief Act, 1963 and Order XXXIX of the Code of Civil Procedure, 1908.

GLOSSARY

Commercial Contract: A commercial contract is a legally binding agreement between two or more parties. Commercial contracts are most often written documents. Commercial contracts spell out exactly what each party must do for the contract to remain legitimate, as well as the consequences of any of the terms and conditions are not followed.

***Quantum meruit* compensation:** Quantum Meruit loosely translates to 'as much as one deserves'. It means something that has been earned. A quantum meruit claim arises, where work is done or services rendered by the one party for the other, in circumstances which entitle the party doing the work or rendering the services to receive a reasonable additional remuneration, the situation being one where either there is no contract or there is a contract but the particular situation is not covered under that contract.

Contract Documents: A contract document is a legally binding agreement between two or more parties. It captures (i) the terms and conditions of the relationship between the parties of the contract, and (ii) sets forth the rights and obligations of each party.

Contract Agreement: A contract agreement defines the agreement in which the parties are specified and their responsibilities are defined in relation to the subject matter of the agreement.

Liquidated damages: It means it shall be taken as the sum which the parties have by the contract assessed as damages to be paid whatever may be the actual damage.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Define Contract. What is the Significance and purpose of Contract?
2. How does a Negotiation plays a vital role in the success of the business? Explain some major guidelines for creating best commercial and operational terms with the vendor.
3. What are the Essentials of a Valid Contract?
4. What are the General and Special Conditions of a Contract?
5. Differentiate between Document Management and Contract Management.

LIST OF FURTHER READINGS

- Common Types of Contract Documents, Contract Process Guide, GW – Procure to Pay, Finance Division, https://procurement.gwu.edu/
- The Contracting Process, Research, Innovation and Impact, The University of Arizona. Available at https://research.arizona.edu/administration/negotiation-and-acceptance/contracting-process
- Ajar Rab (2022) Drafting Contracts: Basic Principles, Eastern Book Company.
- Indian Contract Act, 1872: RK Bangia
- Hewitt Andy (2019) Top Tips: Contract Documents, Instituteccp.
- R. Kumar (2023) Commercial Contracts, 4th Edition, Aggarwal Law House, India
- Ravi Singhania (2020) Drafting of Contracts – Templates with Drafting Notes (Second Edition) Hardcover – 15.
- *Contract Execution - Empotoris Contract Management (2021), IBM*
- *Victor Z. Young, Project Documentation, Projectcubicle*
- *Ailsa Page (2021) Supplier Relationship Management: How to maintain good relationships with suppliers, MYOB*

OTHER REFERENCES (Including Websites/Video Links)

- https://www.contractworks.com/blog/6-key-clauses-found-in-commercial-contracts
- https://www.investopedia.com/terms/o/oral-contract.asp
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- https://certificate.queenslaw.ca/blog/what-did-i-agree-to-contracts-in-our-everyday-lives
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- https://www.investopedia.com/terms/o/oral-contract.asp
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- https://www.evisort.com/glossary/what-is-an-executed-contract
- https://oboloo.com/blog/what-are-contract-documents-definition/
- https://afterpattern.com/clauses/compliance-with-laws
- *https://parleypro.com/blog/contract-management-vs-document-management/*
- https://advance.lexis.com/open/document/openwebdocview/Compliance-With-Laws-Clauses/?pdmfid=1000522&pdd%20ocfullpath=%2Fshared%2Fdocument%2Fforms%2Furn%3AcontentItem%3A5JC3-51K1-JGHR-M4PJ-00000-00&pdcomponentid=500752
- https://www.ontra.ai/
- *Andy Silverman (2020) 5 Tips for Effectively Tracking and Monitoring Contracts, Contractworks. Available https://www.contractworks.com/blog/5-tips-for-effectively-tracking-and-monitoring-contracts*
- *Contract Modification, US Revenue Guide, PwC https://viewpoint.pwc.com/dt/us/en/pwc/accounting_guides/ revenue_from_contrac/revenue_from_contrac_US/chapter_2_scope_and US/29contract_modificat_US.html*
- *Additional payment for extra work done outside the scope of construction contracts, (2020), Ipleaders. Available at https://blog.ipleaders.in/additional-payment-extra-work-done-outside-scope-construction-contracts/*
- *Contract Law Notes, iPleaders. Available at https://blog.ipleaders.in/law-of-contracts-notes/*
- *Business Basics: How to negotiate with vendors effectively. Divvy.com.*

PART II

PLEADINGS AND APPEARANCES

Judicial & Administrative Framework

Lesson 9

KEY CONCEPTS

■ E-Courts ■ Jurisdiction of the Courts ■ Quasi-Judicial Bodies ■ Reference ■ Review ■ Revision

Learning Objectives

To understand:

- The Courts in India and their Jurisdictions
- Development of E-Courts systems in the country
- Quasi-Judicial Bodies and their role
- Various Appellate Forums
- Reference, Review and Revision
- Applicability of CPC on Tribunals

Lesson Outline

- Introduction
- Types of Courts and their Jurisdiction
- E-courts
- Types of Tribunals/Quasi-judicial Bodies
- Procedural aspects of working of Civil Courts
- Types of Criminal Trial Appellate Forums
- Reference and Revision under Criminal Procedure Code
- Reference, Review and Revision under Civil Procedure Code
- Applicability of Civil Procedure Code on Tribunals
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites/video links)

REGULATORY FRAMEWORK

- The Code of Civil Procedure, 1908
- Bharatiya Nagarik Suraksha Sanhita, 2023
- SEBI Act, 1992
- NCLT Rules, 2016

INTRODUCTION

In view of the multifarious activities of a welfare state, legislature is entrusted with the primary duty of making the Laws. However, the legislature cannot work out all the details to fit the varying aspects of complex situations. It must necessarily delegate the working out of details to the executive or any other agency. Therefore, one of the most significant developments of the present century is the growth in the legislative powers of the executives. There is no such general power granted to the executive to make law, it only supplements the law under the authority of legislature. This supplementary legislation is known as 'delegated legislation' or 'subordinate legislation'. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the study of the administrative law. However, the primary function of the executives are administration of the law.

After the role of executive i.e. implementation of the law, the judiciary in entrusted to administer the justice. [1]One of the unique features of the Indian Constitution is that, notwithstanding the adoption of a federal system and existence of Central Acts and State Acts in their respective spheres, it has generally provided for a single integrated system of Courts to administer both Union and State laws. At the apex of the entire judicial system, exists the Supreme Court of India below which are the High Courts in each State or group of States. Below the High Courts lies a hierarchy of Subordinate Courts. Panchayat Courts also function in some States under various names like Nyaya Panchayat, Panchayat Adalat, Gram Kachheri, etc. to decide civil and criminal disputes of petty and local nature. Different State laws provide for different kinds of jurisdiction of courts. Each State is divided into judicial districts presided over by a District and Sessions Judge, which is the principal civil court of original jurisdiction and can try all offences including those punishable with death. The Sessions Judge is the highest judicial authority in a district. Below him, there are Courts of civil jurisdiction, known in different States as Munsifs, Sub-Judges, Civil Judges and the like. Similarly, the criminal judiciary comprises the Chief Judicial Magistrates and Judicial Magistrates of First and Second Class.

'[2]Tribunal' is an administrative body established for the purpose of discharging quasi-judicial duties. An Administrative Tribunal is neither a Court nor an executive body. It stands somewhere midway between a Court and an administrative body. The exigencies of the situation proclaiming the enforcement of new rights in the wake of escalating State activities and furtherance of the demands of justice have led to the establishment of Tribunals. According to Law commission of Indian report, to overcome the situation that arose due to the pendency of cases in various Courts, domestic tribunals and other Tribunals have been established under different Statutes. A 'tribunal' in the legal perspective is different from a domestic tribunal. The 'domestic tribunal' refers to the administrative agencies designed to regulate the professional conduct and to enforce disciple among the members by exercising investigatory and adjudicatory powers. Whereas, Tribunals are the quasi-judicial bodies established to adjudicate disputes related to specified matters which exercise the jurisdiction according to the Statute establishing them.

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1. https://main.sci.gov.in/constitution

2. Kagzi, M.C.J, The Indian Administrative Law, Metropolitan Book Co. Pvt. Ltd., Delhi, 3 rd edn., 1973 at pp. 276 and 279

TYPES OF COURTS AND THEIR JURISDICTION

Broadly speaking there are two types of courts- civil and criminal. The civil courts deal with matters of civil nature whereas the criminal courts deal with criminal matters. Then there are Constitutional Courts. The framework of the current legal system has been laid down by the Indian Constitution and the judicial system derives its powers from it but the system has been inherited from the British rule that preceded independence.

In India, we have courts at various levels – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a hierarchy with the Supreme Court of India at the top, followed by High Courts of respective states with District and Sessions Judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom. The normal trend of the judiciary system is to start any general dispute in the lower court which is then escalated to the higher courts. The judgments can be challenged in the higher courts if the parties to the cases are not satisfied. The process of escalation is systematic.

Supreme Court

India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back into the centuries, forming a living tradition which has grown and evolved with the lives of its diverse people. India's commitment to law is created in the Constitution which constituted India into a Sovereign Democratic Republic, containing a federal system with a Parliamentary form of Government in the Union and the States, an independent judiciary, guaranteed Fundamental Rights and Directive Principles of State Policy containing objectives which though not enforceable in law are fundamental to the governance of the nation.

According to Article 124 of the Constitution, there shall be a Supreme Court of India consisting of a Chief Justice of India and other Judges. Supreme Court of India is the highest level of court of Indian juridical system. It plays the role of the guardian of the Constitution of India. The present strength of Supreme Court is 34 including the Chief Justice of India.

The Supreme Court exercises original jurisdiction exclusively to hear the cases of disputes between the Central Government and the State Governments or between the States. The Supreme Court has original but not exclusive jurisdiction for enforcement of Fundamental Rights as per the provision of Constitution of India through the way of writs. This court is also an appellate court.

Supreme Court has the power to exercise extra ordinary jurisdiction to hear any appeal related to any matter for which any court or tribunal had decided with judgment through the option of special leave petition except the case of tribunal related to Armed Forces. Supreme Court has the power to withdraw or transfer any case from any High Court. The Supreme Court has the authority to review any verdict ordered. The order of Supreme Court is binding on all courts across India.

Advisory jurisdiction: The Supreme Court has the option to report its opinion to the President about any questions raised of public importance referred to it by the President.

High Courts

Article 226 of Constitution of India has given the power to the High Courts to issue different writs for the enforcement of Fundamental Rights guaranteed under the Constitution.

According to Article 226 of the Constitution of India, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

The power conferred above to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

However, the power conferred on a High Court by article 226 shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

High Courts also hear appeals against the orders of lower courts. High courts are empowered to practice superintendence over all the courts and tribunals effective within the regional jurisdiction of the High Court. All the High Courts have the power to pronounce punishment for contempt of court. The High Courts are confined to the jurisdiction of State, group of States or Union Territory. The subordinate courts are covered by the administrative power of the High Courts under which they function.

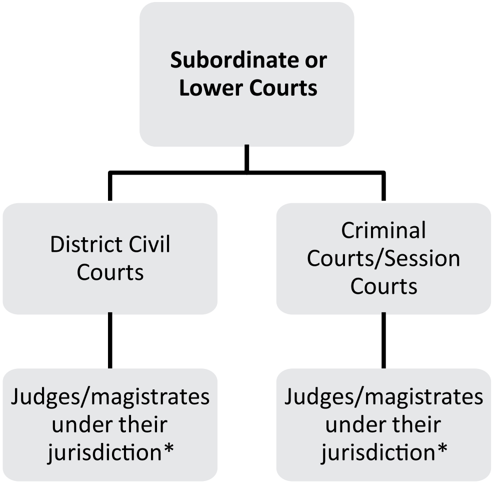
Lower Courts

The District Court in India are established by the respective State Government in India for every district or more than one district taking into account the number of cases, population distribution in the district. These courts are under administrative control of the High Court of the State to which the district concerned belongs.

The court at the district level has a dual structure that runs parallel- one for the civil side and one for the criminal side. The civil side is simply called the District Court and is headed by the district judge. There are additional district judges and assistant district judges who are there to share the additional load of the proceedings of District Courts. These district courts have the additional jurisdictional authority of appeal handling over the subordinate courts in their jurisdiction. The subordinate courts covering the civil cases, in this aspect are considered as Junior Civil Judge Court, Principal Junior and Senior Civil Judge Court, which are also known as Subordinate Courts. All these courts are treated with ascending orders.

The criminal court at the district level is headed by the Sessions Judge. Usually there are Additional Sessions Judges as well in the Court to share the workload of the Sessions Judge. The subordinate courts covering the criminal cases are Second Class Judicial Magistrate Court, First Class Judicial Magistrate Court, and Chief Judicial Magistrate Court along with family courts which are established to deal with the issues related to disputes of matrimonial issues only. The status of Principal Judge of family court is at par with the District Judge.

The court of the district judges is the highest civil court in a district. It exercises both judicial and administrative powers. It has the power of superintendence over the courts under its control. The parallel structure of law courts at the district level usually converges at the top and the head of the court has power of trying both civil and criminal cases. Thus he is designated as the District and Sessions Judge. It must also be borne in mind that name of the subordinate courts at the district level is not uniform across the States.


Subordinate or Lower Courts
District Civil Courts
Criminal Courts/Session Courts
Judges/magistrates under their jurisdiction*
Judges/magistrates under their jurisdiction*

* District Judge, Sessions Judge, Chief Judicial Magistrate, Judicial Magistrate – 1st Class and 2nd Class

Revenue Courts

There is a government apparatus to deal with revenue matters. These are 'courts' but are not a part of Judiciary because they come under the administration of the State governments. Revenue courts deal with matters pertaining to stamp duty, registration etc.

At the lowest level, we have the 'Tehsildar' or Assistant Tehsildar. Above it is the office of the 'Sub-Divisional Officer' (SDO). Then comes the office of District Collector and above it is the 'Board of Revenue'. The Board of Revenue is the highest decision making body at the State level.

E-Courts

The eCourts Project was conceptualized on the basis of the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005" submitted by eCommittee, Supreme Court of India with a vision to transform the Indian Judiciary by ICT enablement of Courts.

Ecommittee is a body constituted by the Government of India in pursuance of a proposal received from the than Hon'ble the Chief Justice of India to constitute an eCommittee to assist him in formulating a National policy on computerization of Indian Judiciary and advise on technological communication and management related changes.

The eCourts Mission Mode Project, is a Pan-India Project, monitored and funded by Department of Justice, Ministry of Law and Justice, Government of India for the District Courts across the country.

The objective of the ecourt mission project are:

- To provide efficient & time-bound citizen centric services delivery as detailed in eCourt Project Litigant's Charter.
- To develop, install & implement decision support systems in courts.
- To automate the processes to provide transparency in accessibility of information to its stakeholders.
- To enhance judicial productivity, both qualitatively & quantitatively, to make the justice delivery system affordable, accessible, cost effective, predictable, reliable and transparent.

With dynamic real time data generated and updated continuously, the NJDG is serving as a source of information of judicial delivery system for all the stakeholders. It is regularly analyzed for meaningful assistance in policy formation and decision making. The NJDG is working as National data warehouse for case data including the orders/judgments for Courts across the country with full coverage of District Courts.

There is an Online Analytical Processing, and Business Intelligence Tools that will help in the summation of multiple databases into tables with summarized reports for preparation of informative management system and dashboards for effective Court and Case Management. The Judicial Management Information System will be helpful in litigations and adjudication pattern analysis and also the impact analysis of any variation in governing factors relating to law, amendments, jurisdiction, recruitment etc. It will also serve as judicial performance enhancing measure for policy makers to be used for decision support system.

According to Objective Accomplishment Report of eCourts Project of eCommittee of Supreme Court of India, the success of eCourts mission Project can be attributed to three systemic and structural:

Firstly, the entire Project has been conceptualized and implemented in Free and Open Source Software. This is perhaps the largest FOSS based project in the world and has resulted in an estimated saving of Rs. 340 crore to the Exchequer excluding huge recurrent cost of license fee and maintenance, simultaneously providing freedom to customise and use the system software.

Secondly, the core-periphery model has been utilized and implemented in the software development. The core is sacrosanct and is decided by the eCommittee and contains data that is available for policy and decision making at the national level – Supreme Court, Parliament and Central Government. Of course, the core data can be accessed and utilized for policy and decision making at the State level. The periphery modules are to be developed by each High Court and can be implemented through the available data in the core. Each High Court has full freedom to develop its periphery modules based on the High Court Rules, the Civil and Criminal Court Manuals. These periphery modules are intended for State level utilization – High Court and District Courts, State Legislature and State Government.

Thirdly, the eCourts Project has been focussed on being citizen-centric, keeping the litigant in mind. This focus has resulted in remarkable coordination and teamwork between hundreds of judicial officers (Trainers and Master Trainers) and court staff (District System Administrators and System Administrators). Appreciating the importance and significance of the eCourts Project for expeditious and affordable justice delivery, the Department of Justice, National Informatics Centre and other Central Government institutions coordinated and cooperated with the expert eCommittee team to bring success to the Project. It is through this teamwork that important software and applications such as Case Information System, eFiling, ePayment, National Service and Tracking of Electronic Processes, Video Conferencing, Virtual Court, National Judicial Data Grid, a variety of mobile applications and several others have been successfully tried, tested and implemented.

E-court Services

As per the data of March 2025, there are 39 High Courts Complexes and 3590 District and Taluka Court complexes under the e-court services. The website https://ecourts.gov.in/ecourts_home/index1.php provides the updated data with respect to High Court Complexes'/District and Taluka Court Complexes' Pending cases, disposed cases and cases listed as on date. The parties can search the status of the cases, caveats and courts orders online.

The services of the Supreme Courts are also available on the website *https://www.sci.gov.in/*. The services *inter alia* includes:

1. Cause List
2. Case Status
3. Daily Orders
4. Judgements
5. Office Report
6. Caveat
7. e-filing
8. Display Board

TYPES OF TRIBUNALS/QUASI-JUDICIAL BODIES

Tribunals in India are a part of the Executive branch of the Government which are assigned with the powers and duties to act in judicial capacity for settlement of disputes. Part XIV of the Constitution of India makes provisions for establishment and functioning of the Tribunals in India. They are quasi-judicial bodies that are less formal, less expensive and enable speedy disposal of cases.

There are tribunals for settling various administrative and tax-related disputes, including Central Administrative Tribunal (CAT), Income Tax Appellate Tribunal (ITAT), National Company Law Tribunal (NCLT), National Green Tribunal (NGT) and Securities Appellate Tribunal (SAT), among others.

Tribunals were added in the Constitution by Constitution (Forty-second Amendment) Act, 1976 as Part XIV-A, which has only two articles viz. 323-A and 323-B. Article 323A provides that a law made by the parliament may provide for establishment of an Administrative Tribunal for the Union and a separate Administrative Tribunal for each state or two or more states. Article 323 B empowers the parliament or state legislatures to set up tribunals for matters other than those mentioned under Article 323A.

Some of the important Tribunals are as follows:

1. **Debt Recovery Tribunal (DRT)**

   The Recovery of Debts and Bankruptcy Act, 1993 (RDB Act) provides speedy redressal to lenders and borrowers through filing of Applications in Debts Recovery Tribunals (DRTs) and appeals in Debts Recovery Appellate Tribunals (DRATs).

   The Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) provides access to banks and financial institutions covered under the Act for recovery of secured debts from the borrowers without the intervention of the Courts at the first stage. Securitisation Appeals can be filed with the DRTs by those aggrieved against action taken by secured creditors under the SARFAESI Act.

   The e-DRT project has also been implemented in all DRTs and DRATs. This project aims to bring in improved access, efficiency and transparency. e-DRT provides access to e-filing, e-payment of fees, cause list generation and a case information system that enables viewing of case status, orders and judgments.

2. **National Company Law Tribunal**

   National Company Law Tribunal (NCLT) is a quasi-judicial body exercising equitable jurisdiction, which was earlier being exercised by the High Court or the Central Government. It has been established by the Central government under section 408 of the Companies Act, 2013 with effect from 1st June 2016. The Tribunal has powers to regulate its own procedures.

   The establishment of the National Company Law Tribunal (NCLT) consolidates the corporate jurisdiction of the following authorities:

   i) Company Law Board

   ii) Board for Industrial and Financial Reconstruction

   iii) The Appellate Authority for Industrial and Financial Reconstruction

   iv) Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High Courts.

3. **Consumer Forum/Commissions**

   To protect the rights of the consumers in India and establish a mechanism for settlement of consumer disputes, a three-tier redressal forum containing District, State and National level consumer forums/commissions have been set up. The District Consumer Forum/Commission deals with consumer disputes involving a value of upto Rs. 50 Lakh rupees. State Commission has jurisdiction in consumer disputes having a value of exceeds 50 lakh rupees but does not exceed 2 crore rupees. The National Commission deals in consumer disputes above Rs. 2 crores, in respect of defects in goods and or deficiency in service. It is important to note that consumer courts do not entertain complaints for alleged deficiency in any service that is rendered free of charge or under a contract of personal service.

   The Act also provides consumers the option of filing complaint electronically. To facilitate consumers in filing their complaint online, the Central Government has set up the E-Daakhil Portal, which provides a hassle-free, speedy and inexpensive facility to consumers around the country to conveniently approach the relevant consumer forum, dispensing the need to travel and be physically present to file their grievance. E-Daakhil has many features like e-Notice, case document download link & VC hearing link, filing written response by opposite party, filing rejoinder by complainant and alerts via SMS/Email.

To provide a faster and amicable mode of settling consumer disputes, the Act also includes reference of consumer disputes to Mediation, with the consent of both parties.

4. Motor Accident Claims Tribunal (MACT)

The Motor Accidents Claims Tribunal deals with matters related to compensation of motor accidents victims or their next of kin. Victims of motor accident or legal heirs of motor accident victims or a representing Advocate can file claims relating to loss of life/property and injury cases resulting from Motor Accidents. Motor Accident Claims Tribunal are presided over by Judicial Officers from the State Higher Judicial Service and are under direct supervision of the Hon'ble High Court of the respective state.

5. Central Administrative Tribunal (CAT)

Central Administrative Tribunal is a multi-member body to hear on cases filed by the staff members alleging non-observation of their terms of service or any other related matters and to pass judgments on those cases. This Tribunal established in pursuance of the amendment of Constitution of India by Articles 323A.

6. National Green Tribunal (NGT)

National Green Tribunal was established for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation of damages to persons and property and for related matters.

NGT dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same.

PROCEDURAL ASPECTS OF WORKING OF CIVIL COURTS

1. Jurisdiction

The Civil Procedure Code,1908 stipulates that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred. The inherent lack of jurisdiction cannot be cured even by consent of parties, which means if the court does not have any jurisdiction at all; the parties cannot subsequently confer it by an agreement. The onus of proving that the court does not have jurisdiction lies on the party who disputes the jurisdiction. The jurisdiction is basically of three types.

(a) **Pecuniary:** The purpose of Pecuniary jurisdiction is to decide the maximum monetrary limits for which a forum can entertain a cause of action.

(b) **Territorial:** The purpose of territorial jurisdiction is to ensure smooth and speedy trial of the matter with least inconvenience to the affected parties. Hence the suit cannot be filed at any place depending on wish of the party. The court concern should have territorial jurisdiction. The territorial jurisdiction is conferred on a court by following factors:-

   (i) By virtue of the fact of residence of the Defendant.

   (ii) By virtue of location of subject matter within jurisdiction of the court.

   (iii) By virtue of cause of action arising within jurisdiction of such court.

(c) **As to subject matter:** For example, Motor Vehicles Act provides for special tribunal for matters under it. Similarly disputes relating to terms of service of government servants go to Administrative Tribunals.

The first and fundamental rule governing jurisdiction is that suit shall be instituted in the court of lowest grade competent to try it.

The Full Bench of Calcutta High Court in the case of Hriday Nath Roy, has mentioned that jurisdiction may have to be considered with reference to place, value and nature of the subject matter. The classification of jurisdiction into territorial jurisdiction, pecuniary jurisdiction and jurisdiction of the subject matter is of a fundamental character. In the Order of Reference to a Full Bench in the case of Sukh Lal v. Tara Chand 33 C. 68, it was stated that jurisdiction may be defined to be the power of a Court to hear and determine a cause, to adjudicate or exercise any judicial power in relation to it. In other words, by jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.

2. Stay

With the object of preventing courts of concurrent jurisdiction simultaneously trying two parallel suit in respect of the same matter in issue, Civil Procedure Code has vested inherent power in the court to stay the suit. The pendency of a suit in Foreign Court does not preclude the courts in India for trying a suit founded on same cause of action. The application for stay of suit is maintainable at any stage of the suit. The court does not have option to refuse on ground of delay.

3. *Res Judicata* and bar to further Suits

The principle of res judicata aims at bringing finality to the litigation. The basic principle is that a final judgement rendered by a court of competent jurisdiction is conclusive on merits as to rights of the parties and constitutes an absolute bar against subsequent action involving the same claim. The principle of resjudicata applies only under following circumstances:

(i) The matter directly and substantially in issue has been directly and substantially in issue in a former suit between same parties or between whom they claim litigation under the same title.

(ii) The matter is in the court competent to try such subsequent suit or the suits in which such issue has been subsequently raised and has been heard and finally decided.

The word former suit means suit decided prior, irrespective of the date of institution. The matter must be decided on merits i.e. the issue was alleged by one party and denied by the other. The principle of resjudicata is one of convenience and not one of absolute justice and it should not be unduly conditioned and qualified by technical interpretations.

4. Plaint

The entire legal machinery under the Civil Law is set in motion by filing of plaint and hence plaint is the actual starting point of all pleadings in a case. Though the law has not laid down any tight jacket formats for plaints, its minimum contents have been prescribed.

The Plaintiff is required to annex list of documents which the Plaintiff has produced alongwith the plaint and shall also submit additional copies as may be required. Where the Plaintiff sues upon a document in his possession or power he shall produce it in the court when plaint is presented. If the document is not in his possession, the Plaintiff will state in whose possession it is. A document, which has to be produced and has not been produced at the time of presenting the plaint cannot be received in evidence at the hearing of the suit without permission from the concerned court.

If after submitting the plaint the court finds that it should be submitted before some other court the plaint is returned, and intimation thereof is given to the Plaintiff.

The court has power to reject the plaint on following grounds:

(i) Where it does not disclose the cause of action

(ii) Where the relief claimed is undervalued and Plaintiff fails to correct the valuation within the time fixed

(iii) If the relief is properly valued but insufficient court fee / stamp is paid and the Plaintiff fails to make good such amount

(iv) Where the suit appears to be barred by any law, from the statements in the plaint. The rejection of plaint on aforesaid grounds does not of its own force bar the Plaintiff from presenting a fresh plaint.

5. Summons

When the suit is duly instituted summons may be issued to Defendant to appear and answer the claim. Summons is an instrument used by the court to commence a civil action or proceedings and is a means to acquire jurisdiction over party. It is a process directed to a proper officer requiring him to notify the person named, that an action has been commenced against him, in the court from where process is issued and that he is required to appear, on a day named and answer the claim in such action.

Defendant to whom a summons has been issued may appear in person or by a pleader duly instructed or by a pleader accompanied by some person who is able to answer all questions. To expedite the filing of reply and adjudication of claim, the court may direct filing of written statement on date of appearance and issue suitable summons for that purpose. Failure to do so may result in Ex-parte judgement. The provisions of substituted service have to be resorted when the summons is not served by normal process through the court bailiff.

Where the court is satisfied that there is reason to believe that the Defendant is keeping out of the way for purpose of avoiding service or that for any others reason the summons cannot be served in ordinary way the court shall order summons to be served by affixing copy thereof in conspicuous part of the house. To expedite service of summons one more provision is relating to substituted service under which the court orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the Defendant last resided or carried on business or personally worked for gain. Where the service is substituted, the court shall fix time for appearance of the Defendant as the case may require.

6. Appearance of Parties

On the day fixed in the summons the Defendant is required to appear and answer and the parties shall attend the court unless the hearing is adjourned to a future day fixed by the court. If the Defendant is absent court may proceed ex-parte. Where on the day so fixed it is found that summons has not been served upon Defendant as consequence of failure of Plaintiff to pay the court fee or postal charges the court may dismiss the suit. Where neither the Plaintiff nor the Defendant appears the court may dismiss the suit. Such dismissal does not bar fresh suit in respect of same cause of action.

If the Defendant appears and Plaintiff does not appear and the Defendant does not admit the Plaintiff's claim wholly or partly, court shall pass order dismissing the suit. If Defendant appears and admits part or whole of the claim the decree will be passed accordingly. If the Plaintiff shows sufficient cause re-opening of the matter is mandatory. What is sufficient cause depends upon facts and circumstances of each case and the court adopt liberal and generous construction which advances cause of justice and hence restoration is ordinarily not denied.

7. Adjournments

Courts have the power to adjourn a case and take it up on a future date. Adjournments frequently sought by the parties contribute significantly to the delays caused in deciding the matters. The granting of adjournments is at the discretion of the court. The rules governing adjournments are considerably strict if applied in their true spirit.

8. Ex-parte Decrees

A decree against the Defendant without hearing him or in his absence/in absence of his defence can be passed under the following circumstances:-

(i) Where any party from whom a written statement is required fails to present the same within the time permitted or fixed by the court, as the case may be the court shall pronounce judgement against him, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgement a decree shall be drawn up.

(ii) Where Defendant has not filed a pleading, it shall be lawful for the court to pronounce judgement on the basis of facts contained in the plaint, except against person with disability.

(iii) Where the Plaintiff appears and Defendant does not appear when suit is called up for hearing and summons is property served the court may make an order that suit will be heard ex parte.

If an ex-parte decree is passed and the Defendant satisfies that he was prevented by sufficient cause then he has the following remedies open:

(i) Prefer appeal against decree.

(ii) Apply for Review.

(iii) Apply for setting aside the Ex-parte Decree.

The words “Sufficient Cause” has not been defined and it will depend on facts and circumstances of each case. The Defendant is not entitled to approach the court to set aside the ex-parte decree as a matter of right. An ex-parte decree is an equally effective decree unless set aside in appeal or by the same court. The court, which passed ex-parte decree, has the power to set aside the decree.

9. Interlocutory Proceedings

The period involved between initiation and disposal of litigation is substantially long. The intervention of the court may sometimes be required to maintain the position as it prevailed on the date of litigation. In legal parlance it is known as “status quo”. It means preserving existing state of things on a given day. In that context interlocutory orders are provisional, interim, temporary as compared to final. It does not finally determine cause of action but only decides some intervening matter pertaining to the cause.

The procedure followed in the court is that the separate application for interim relief is moved at the time of filing of suit or at a subsequent stage. The court either grants the order ex-parte or issues urgent show cause notice and the reply is to be filed within short time.

One of the most common interlocutory reliefs sought is that of ‘injunction’.

10. Written Statement

The Defendant is required to file a written statement of his defence at or before the first hearing or such time as may be allowed along with the list of documents relied upon by him. If Defendant disputes maintainability of the suit or takes the plea that the transaction is void it must be specifically stated. A general denial of grounds alleged in the plaint is not sufficient and denial has to be specific. The denial should not be an evasive denial but it must be on point of substance. Every allegation of fact in the plaint if not denied specifically or by necessary implication or stated to be not admitted in the pleading shall be deemed to be admitted.

11. Examination of Parties

Examination of parties is an important stage after appearance. At first hearing of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement. Such admissions and denials shall be recorded. The examination may be an oral examination.

Where admission of facts have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for determination of any such question between the parties, make such order or give such judgement as it may think fit.

12. Production of documents

The parties or their pleaders shall produce at or before the settlement of issues, all documentary evidence of every description in their possession or power, on which they intend to rely, and which has not been filed in the court or ordered to be produced.

No documentary evidence in the possession or power of any party, which should have been but has not been produced in accordance with the aforesaid requirements, shall be subsequently admissible. Any objection as to mode of proof is to be raised at the time when document is sought to be proved in evidence. When document is exhibited without any objection as to mode of proof, it is not proper for the court to take any objection regarding the mode of proof for providing the document at final stage.

Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents shall be deemed to be admitted. The court may however at its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

13. Framing of Issues

The court shall at first hearing, after reading the plaint and written statement ascertain upon what material propositions of facts or law parties are at variance.

Court is required to pronounce judgement on all the issues. Issues may be framed from allegations made on oath by the parties or in answer to interrogatories or from contents of documents produced by either party. If the court is of the opinion that the case or any part thereof may be disposed of on issue of law only, it may first try it, if issue relates to:-

(i) Jurisdiction of the court,

(ii) Bar to the suit created by law for the time being in force.

Where the parties are at issue on some question of law or fact and issues have been framed by the court as herein-above provided, if the court is satisfied that no further argument or evidence than what the parties can at once adduce is required upon such of the issues as may be sufficient for decision of the suit and that no injustice will result from proceeding with the suit forthwith, the court may proceed to determine such issues and if the finding thereon is sufficient for the decision, may pronounce judgement accordingly.

14. Summoning and Attendance of Witnesses

On the date appointed by the court and not later than 15 days after the date on which issues are settled parties shall present in court a list of witnesses whom they propose to call either to give evidence or to produce documents.

The judge shall make or dictate on a typewriter or cause to be mechanically recorded, a memorandum of the substance of deposition of witnesses. A witness may be examined on commission also. If signature of witness is not taken on any part of deposition or correction it does not make deposition invalid.

The court may at any stage of a suit inspect any property or thing concerning which any question may arise. The court also has the power to recall any witness who is already called earlier and put such questions as deemed fit. Court is also having suo motu powers. The court may of its own accord, summon and examine any witness including a party to the suit or strangers to the suit.

Where a person to whom summons has been issued either to attend or to give evidence or production of any documents and his deposition or production is material and person has failed to attend without lawful excuse, court may issue orders for arrest either with or without bail. If the witness appears such orders may be withdrawn.

15. Affidavits

The court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit or affidavit of any witness may be read at hearing, on such condition, as court thinks reasonable.

Affidavit shall contain only such facts as the deponent is able of his own knowledge to prove except on interlocutory applications on which statement of belief may be admitted provided grounds are stated. The affidavits have to be properly verified to avoid any dispute at a later stage. Need for verification of affidavits is to test genuineness and authenticity of allegations and also to make the deponent responsible for allegation made. Affidavit, which is not properly verified, is no affidavit at all. If affidavits are not in conformity with the rules, they can be rejected. Instead of rejecting the affidavit the court may give opportunity to the party to file proper affidavit. Interlocutory applications can also be decided on affidavits.

Even if evidence is given on affidavit the court may direct that such person will be produced for cross examination.

16. Final Argument

Once the documents have been exhibited in the court and the witness(es) of both the sides examined and cross-examined, the stage is set for ‘final arguments’.

It allows both the sides to present its case after taking into account the submissions made by the witnesses of the other party and the documents produced by it. It can, therefore, be said to be an opportunity for both the sides to present a summary of their case or defence, as the case may be.

17. Judgement

Judgement means the statement given by the judge on ground of which a decree is passed. The court after the case has been heard shall pronounce judgement in open court either within one month of completion of arguments or as soon thereafter as may be practicable, and when the judgement is to be pronounced judge shall fix a day in advance for that purpose. Where judgement is not pronounced within 30 days from the date on which hearing of case was concluded, the court shall record the reasons for such delay. The last paragraph of the judgement shall indicate in precise terms the relief, which has been granted by such judgement. Every endeavor shall be made to ensure that the decree is drawn as expeditiously as possible and in any case within 15 days from the date on which the judgement is pronounced. The court also has the power to award 'cost'. If on any date fixed for hearing, a party to the suit fails to take step or obtains adjournment for producing evidence, the court may also award costs for causing delay. If the court, that the claim or defence as against the objector is false or vexatious to the knowledge of the party by whom it has been put forward, and if such claim is disallowed, abandoned or withdrawn, court holding the claim false or vexatious may order compensatory costs.

18. **Decree and Execution**

After the decree is passed the process of execution which involves actual implementation of the order of the court through the process of the court starts the entire process of executing of decree.

TYPES OF CRIMINAL TRIAL

According to the Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS), a criminal trial is of three types. Depending upon the type of criminal trial the different stages of a criminal trial are discussed below.

1. Warrant Cases

According to section 2(1)(z) of BNSS, (z) "warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The trial in warrant cases starts either by the filing of FIR in a police station or by filing a complaint before a Magistrate. Later, if the Magistrate is satisfied that the offence is punishable for more than two years, he sends the case to the Sessions court for trial. The process of sending it to Sessions court is called "committing it to Sessions court".

Important features of a warrant case are:

- Charges must be mentioned in a warrant case
- Personal appearance of accused is mandatory
- A warrant case cannot be converted into a summons case
- The accused can examine and cross-examine the witnesses more than once.
- The Magistrate should ensure that the provisions of Section 230 are complied with. Section 230 of BNSS, include the supply of copies such as police report, FIR, statements recorded or any other relevant document to the accused.

The stages of trial in warrant cases are given from Section 261 to Section 273 of BNSS.

A. Different Stages of Criminal Trial in a Warrant Case when instituted by the police report

- First Information Report: Under Section 173 of BNSS, an FIR or First Information Report is registered by any person. FIR puts the case into motion. An FIR is information given by someone (aggrieved) to the police relating to the commitment of an offense.
- Investigation: The next step after the filing of FIR is the investigation by the investigating officer. A conclusion is made by the investigating officer by examining facts and circumstances, collecting evidence, examining various persons and taking their statements in writing and all the other steps necessary for completing the investigation and then that conclusion is filed to the Magistrate as a police report.
- **Charges:** If after considering the police report and other important documents the accused is not discharged then the court frames charges under which he is to be tried. In a warrant case, the charges should be framed in writing.
- Section 264 of BNSS talks about the plea of guilty. After framing of the charges the accused is given an opportunity to plead guilty, and the responsibility lies with the judge to ensure that the plea of guilt was voluntarily made. The judge may upon its discretion convict the accused.

- Prosecution evidence: After the charges are framed, and the accused pleads not guilty, then the court requires the prosecution to produce evidence to prove the guilt of the accused. The prosecution is required to support their evidence with statements from its witnesses. This process is called "examination in chief". The magistrate has the power to issue summons to any person as a witness or orders him to produce any document.
- Statement of the accused: Section 351 of BNSS gives an opportunity to the accused to be heard and explain the facts and circumstances of the case. The statements of accused are not recorded under oath and can be used against him in the trial.
- Defence evidence: An opportunity is given to the accused to produce evidence so as to defend his case. The defense can produce both oral and documentary evidence.
- Judgement: The final decision of the court with reasons given in support of the acquittal or conviction of the accused is known as judgement. In case the accused is acquitted, the prosecution is given time to appeal against the order of the court. When the person is convicted, then both sides are invited to give arguments on the punishment which is to be awarded. This is usually done when the person is convicted of an offence whose punishment is life imprisonment or capital punishment.

B. Stages of Criminal Trial in a Warrant Case when Private Complaint institutes case

It may sometimes happen that the police refuses to register an FIR. In such cases one can directly approach the criminal court under Section 175 of BNSS. On the filing of the complaint, the court will examine the complainant and its witnesses to decide whether any offence is made against the accused person or not. After examination of the complainant, the Magistrate may order an inquiry into the matter by the police and to get him submit a report for the same.

- After examination of the complaint and the investigation report, the court may come to a conclusion whether the complaint is genuine or whether the prosecution has sufficient evidence against the accused or not. If the court does not find any sufficient material through which he can convict the accused, then the court will dismiss the complaint and record its reason for dismissal
- After examination of the complaint and the inquiry report, if the court thinks that the prosecution has a genuine case and there are sufficient material and evidence with the prosecution to charge the accused then the Magistrate may issue a warrant or a summon depending on the facts and circumstances.

2. Summons Cases

According to section 2(1)(x) of BNSS, "summons-case" means a case relating to an offence, and not being a warrant-case.

A summons case does not require the method of preparing the evidence. Nevertheless, a summons case can be converted into a warrant case by the Magistrate if after looking into the case he thinks that the case is not a summon case.

Important points about summons case

- A summons case can be converted into a warrant case
- The person accused need not be present personally
- The person accused should be informed about the charges orally. No need for framing the charges in writing.
- The accused gets only one opportunity to cross-examine the witnesses.

The different stages of criminal trial in a summon case are given from Section 274 to Section 282 of BNSS.

Stages of Criminal Trial in a Summons Case

- Pre-trial: In the pre-trial stage, the process such as filing of FIR and investigation is conducted.
- Charges: In summons trials, charges are not framed in writing. The accused appears before the court or is brought before the court then the Magistrate would orally state the facts of the offense he is answerable.
- Plea of guilty: The Magistrate after stating the facts of the offence will ask the accused if he pleads guilty or has any defense to support his case. If the accused pleads guilty, the Magistrate records the statement in the words of the accused as far as possible and may convict him on his discretion.
- Plea of guilty and absence of the accused: In cases of petty offences, where the accused wants to plead guilty without appearing in the court, the accused should send a letter containing an acceptance of guilt and the amount of fine provided in the summons. The Magistrate can on his discretion convict the accused.
- Prosecution and defense evidence: In summons case, the procedure followed is very simple and elaborate procedures are eliminated. If the accused does not plead guilty, then the process of trial starts. The prosecution and the defense are asked to present evidence in support of their cases. The Magistrate is also empowered to take the statement of the accused.
- Judgement: When the sentence is pronounced in a summons case, the parties need not argue on the quantum of punishment given. The sentence is the sole discretion of the judge. If the accused is acquitted, the prosecution has the right to appeal. This right to appeal is also extended to the accused.

3. Summary Trial

Cases which generally take only one or two hearings to decide the matter comes under this category. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money. Those cases in which an offence is punishable with an imprisonment of not more than six months can be tried in a summary way. The point worth noting is that, if the case is being tried in a summary way, a person cannot be awarded a punishment of imprisonment for more than three months.

The trial procedure is provided from Section 283 to Section 288 of BNSS.

Stages of Criminal Trial in Summary Cases

- The procedure followed in the summary trial is similar to summons-case.
- Imprisonment up to three months can be passed.
- In the judgement of a summary trial, the judge should record the substance of the evidence and a brief statement of the finding of the court with reasons.

APPELLATE FORUMS

Any society that claims to uphold the supremacy of law will definitely have an elaborate provision for appeal under its various laws. This is because the majesty of judiciary notwithstanding, at the end of the day, judges are human beings and they can also be at fault just like any other individual. It is a fundamental tenet of a just society that the shortcomings of men should not operate to the disadvantage of fellow human beings in the courts of law. The system of Appeal provides an opportunity to correct judicial orders which otherwise would operate unjustly. Indian legal system has made sufficient provisions for appeal both under the Civil Procedure Code as well as the Bharatiya Nagarik Suraksha Sanhita. Various laws themselves have specific provisions for appeal.

Under the Civil Procedure Code, an appeal may be an appeal from order or an appeal from decree. All orders are not appealable and complete description of the appellable orders has been given in Order 43 of the Code of Civil Procedure. The appeal has to be preferred within prescribed limitation period before the appellate court. The limitation period for appeal to High Court is 90 days and appeal to District Court is 30 days. If the period of limitation is expired, then application for condonation of delay also is required to be moved.

Bharatiya Nagarik Suraksha Sanhita, 2023 also contains elaborate provisions on appeals against a judgment or order of the criminal courts. Appeals to the Sessions Court and to the High Court are largely governed by the same set of rules and procedure. But the High Court being the highest appellate court within a state, has been given primacy in many cases where appeal is permissible.

Thus, District and Sessions Court and High Courts are the most common appellate forums.

The Supreme Court is the appellate court of last resort and enjoys very wide plenary and discretionary powers in the matters of appeal. Under Article 136 of the Constitution, the Supreme Court also enjoys a plenary jurisdiction in matters of appeal. However, Article 136 is not a regular forum of appeal at all. It is a residual provision which enables the Supreme Court to interfere with the judgment or order of any court or tribunal in India in its discretion.

Indian laws that have constituted Tribunals for dispute settlement or grievance redressal have constituted appellate forum. For example, under the Companies Act, 2013 the appellate forum is National Companies Law Appellate Tribunal (NCLAT) if one wants to challenge the order of National Company law Tribunal. Similarly, the appellate tribunal for Securities Exchange Board of India (SEBI) is Securities Appellate Tribunal (SAT) and for Debt Recovery Tribunal is Debt Recovery Appellate Tribunal (DRAT). Some of the laws like the Companies Act provide that matters from appellate tribunal (NCLAT) will go directly to the Supreme Court and not to the High Courts.

As appeal by itself shall not operate as stay of proceedings under the decree or order, except when directed otherwise by the appellate court, the execution of decree passed by the lower court also shall not be stayed for the mere reason that appeal is preferred.

REFERENCE AND REVISION UNDER BHARATIYA NAGARIK SURAKSHA SANHITA

Reference

According to section 436(1) of BNSS, where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

The section does not intend a reference with a view to resolve a conflict of authority where different views on a certain point of law have been expressed by some High Court, the reason being that the Court desiring to make a reference is supposed to follow the law laid down by the High Court to which it is subordinate.

It is necessary for the Court making a reference to give its own opinion on the law which is sought to be referred to for clarification because the High Court is not expected to answer hypothetical questions of law however interesting or important they might be.

Revision

Sections 438 to 445 of BNSS deals with the revisional jurisdiction of the High Court and the Sessions Court. Revision lies both in pending and decided cases and it can be filed before a High Court or a Court of Session. Very wide discretionary powers have been conferred on the Sessions Court and the High Court.

The object of the revision is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals. The purpose of revision is to enable the revision court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the inferior criminal court.

Section 438 of BNSS empowers the High Court and the Sessions Judge to call for records of any inferior Criminal Court and examine them for themselves as to whether a sentence, finding or order of such subordinate Court is legal, correct or proper and whether the proceedings of such Court are regular or not, with a view to prevent miscarriage of justice and perpetuation of illegality.

The High Court or the Sessions Judge have the power to interfere at any stage of the proceeding, i.e., the case and they are under a legal duty to interfere when it is brought to their notice that some person has been illegally prosecuted or subjected to harassment, or some material error of law or procedure has been committed by an inferior Court which has resulted in miscarriage of justice.

According to section 438(1), the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

The revisional jurisdiction of the High Court or a Sessions Judge under Section 438 extends only to the 'inferior Criminal Courts' and it does not include a civil or revenue Court acting under Section 379 of BNSS. The Sessions Judge is inferior to the High Court and, therefore, the High Court can call for and examine the record of any proceeding before the Sessions Judge.

Proceeding

The term 'proceeding' used in Section 438(1) of BNSS has a very wide connotation. It is not only confined to cases related to a commission or trial of an offence but include all judicial proceedings taken before an inferior Criminal Court even though they are not related to any specific offence. The real test is not the nature of the proceeding but nature of Court in which such proceeding is held. If it is held in an inferior Criminal Court, the revisional jurisdiction of the High Court or Sessions Judge would extend to such proceeding under Section 438 (1).

The revisional Court has the power to order the release of offender on bail or bond under Section 438(1). The discretion in this regard should, however, be used judicially considering all the circumstances of the case.

Dismissal of revision by the High Court without assigning reasons is not sustainable and matter may be remitted to the Court for reconsideration.

Interlocutory Order

Section 438(2) bars the exercise of revisional power in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. The statutory bar on the power of revision in relation to interlocutory orders is intended with the object of eliminating inordinate delay in the disposal of criminal cases and to ensure expeditious trials.

What is an interlocutory order has always been a debatable issue, more so, because it has not been defined anywhere in BNSS. An order which is not final but merely provisional or temporary is generally called an interlocutory order. But the true test of determining whether or not, an order is interlocutory in nature is whether the order in question finally disposes of the rights of the parties or leaves the case still alive and undecided. For instance, grant or cancellation of bail, adjournment of cases, etc. are interlocutory orders.

The Supreme Court has, however, held that the term 'interlocutory order' as used in Section 438(2) should be given liberal construction in favour of the accused in order to ensure fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted to 'intermediate' or 'quasi-final' orders which are not purely interlocutory in nature.

No Second revision

Section 438(3) permits only one revision therefore if an application is made to a Sessions Judge and he is of the opinion that it should be referred to the High Court, then a fresh application for revision can be made to the High Court. But the sub-section bars an application for the revision to the High Court if a person has already applied for it to the Sessions Judge or vice versa. A person can directly move a revision application to the High Court without first approaching the Sessions Judge. But if he moves the Sessions Judge he cannot thereafter approach the High Court for another revision.

The general rule in this regard is that a concurrent jurisdiction is conferred on two Courts, the aggrieved party should ordinarily first approach the inferior Court, i.e., the Sessions Judge in the context of Section 438(3) unless exceptional grounds for taking the matter directly to the higher Court (High Court in this case) are made out.

Under Section 439 of BNSS, the revision Court may make an order for further inquiry. Further inquiry entails supplemental inquiry upon fresh evidence. The power under Section 439 of BNSS is not co-extensive with Section 438 of BNSS but extends far wider as the record can 'otherwise' be examined by the revision Court without recourse to Section 438 of BNSS.

Sessions Judge's powers of revision (Section 440 of BNSS)

(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under Section 442(1) of the Sanhita.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under subsection (1), the provisions of sub-sections (2), (3), (4) and (5) of Section 442 shall, so far as may be, applied to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

Thus, while hearing a case records of which have been called for revision by himself, the Sessions Judge has the same powers as the High Court has under Section 442 of the Sanhita. It would appear from Section 440(3) of the Sanhita that, while a person has the choice to move either the High Court or the Sessions Judge under Section 438 of Sanhita, if he chooses to go before the Sessions Judge, he cannot thereafter go before the High Court even if the Sessions Judge rejects his revision application.

An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

Section 442 deals with the powers of the High Court as a Court of revision. It is a discretionary jurisdiction vested in the High Court which should be exercised sparingly to decide questions as to legality, propriety, regularity or correctness of any finding, sentence or order recorded or passed by the inferior Criminal Court. The section also empowers the High Court to direct tender of pardon to the accused as contemplated by Section 344.

The High Court can exercise revisional powers under this section either suo motu, that is, on its own initiative or on a petition of any aggrieved party or any other person. The exercise of revisional power by the High Court is, however, subject to two limitations which are as follows:

(1) Where a person or someone on his behalf has made an application for revision before the Sessions Judge under Section 440 (3), no further revision can be entertained by the High Court at the instance of such person; and

(2) Where an appeal lies but it was not availed of by the person, no revision can be entertained by the High Court at the instance of the party who could have appealed but did not do so.

The High Court may even direct additional evidence to be taken in case of a revision against discharge of the accused in the interest of justice. But otherwise the jurisdiction of the High Court in a criminal revision is drastically restricted and it cannot embark upon re-appreciation of the evidence.

Section 442(1) provides that in the exercise of revisional jurisdiction the High Court may exercise any of the powers conferred on it as a Court of Appeal subject to exceptions specified there under.

These exceptions are:

(1) In an appeal, the High Court is empowered under Section 427(a) to reverse an order of acquittal into conviction and vice versa, but in its revisional power it cannot convert a finding of acquittal into a conviction as per sub-section (3) of Section 442. It has no jurisdiction to convert finding of acquittal into one of conviction by seeking recourse to indirect method of ordering retrial.

(2) In appeal, the High Court will interfere if it is satisfied about the guilt of the accused but in revision it may interfere only when it is brought to its notice that there has been miscarriage of justice.

(3) An appeal cannot be dismissed unless the accused or his pleader is afforded an opportunity to be heard but in revision the accused is to be given opportunity to be heard only if the order to be passed is going to be prejudicial to him.

The revisional power of the High Court may be said to be wider in scope than its appellate powers in the sense that the High Court can correct irregularities or improprieties of procedure which come to its notice. Again, the provision of abatement of appeal on death of the accused does not apply to revision petition and it can exercise its revisional power even after the death of the accused

As already discussed in the context of Section 438 (2) the High Court shall not use its revisional power in relation to an interlocutory order passed by an inferior criminal Court in any appeal, inquiry, trial or other proceeding.

Though the High Court is not empowered to set aside an order of acquittal in exercise of its revisional jurisdiction but where the acquittal is based on compounding of an offence and the compounding is invalid in law, such an acquittal may be set aside by the High Court in the exercise of revisional powers.

Though the High Court has no power to set aside an order of acquittal and convert it into conviction of the accused under this section but it has the power to direct re-trial of the case when there has been patent illegality or gross miscarriage of justice in the findings of the inferior Court.

The High Court should order re-trial of the case under its revisional jurisdiction only in very exceptional cases where the "interests of public justice require interference for the correction of gross miscarriage of justice". It cannot be exercised merely because the inferior Court has misappreciated the evidence or taken a wrong view in interpreting any provision of law.

No Revision where right to Appeal exists

Section 442(4) provides that the party having right of appeal cannot apply for revision. BNSS provides a remedy, by way of appeal under Chapter XXXII and if the party does not file an appeal against an order of the inferior criminal Court, he will not be permitted to prefer a revision against that order. But legal bar does not stand in the way of High Court's exercise of power of revision suo motu. It can itself call for the records of proceedings of any inferior criminal Court and has power to enhance the sentence by exercising its revisional jurisdiction.

Revision may be treated as Appeal

Section 442(5) vests a discretionary power in the High Court to treat a revision petition as an appeal and deal with it under its appellate jurisdiction under Chapter XXXII. But it can do so when an appeal against the order of the inferior Court lies but the petitioner has filed a revision under an erroneous belief that an appeal does not lie and when it is in the interest of justice to do so.

Enhancement of Sentence

The High Court, under its revisional jurisdiction does not exercise power of enhancing the sentence in every case in which the sentence passed appears to be inadequate. It would interfere when it is convinced that the sentence passed is manifestly and grossly inadequate.

The District Magistrate, a Sessions Judge or the Government pleader may draw the attention of the High Court to a sentence which is inadequate and deserves to be enhanced or the High Court can also *suo motu* call for the record of a particular case where it is of the opinion that the sentence awarded is grossly inadequate.

There is no limitation on the power of the High Court as regards enhancement of sentence to the extent of maximum prescribed by the Indian Penal Code, except in cases tried by Magistrates.

But before doing so, the Court has to be issued a show-cause notice against the enhancement of his sentence.

Reduction of Sentence

If after hearing the State, i.e., the Government pleader, the High Court comes to a conclusion that the sentence imposed on the accused is too severe and needs to be reduced, it may reduce it exercising its revisional jurisdiction. However, it cannot be reduced below the prescribed statutory limit, if any, provided in the Bharatiya Nyaya Sanhita or the relevant Act.

Fact finding

The jurisdiction of the High Court in revision of criminal cases is severely restricted and confined only to the questions of law. It cannot embark upon a re-appreciation of evidence. The High Court does not normally interfere with a concurrent finding of fact. The High Court in exercise of its revisional power will not go into the question of sufficiency of material before the lower Court for its decision or order. Where the trial has dealt with the matter fully, the High Court will not interfere and disturb the order of the trial Court. While disposing of revision petition the High Courts must ensure that the principles of natural justice are not violated.

REFERENCE, REVIEW AND REVISION UNDER CIVIL PROCEDURE CODE

References

Reference under Section 113 and Order XLVI, Civil Procedure Code:

(a) A reference should be made to the High Court by a District Judge or Judge of a Court of Small Causes, under the provisions of Section 113 and Order XLVI, Rule I of the Code of Civil Procedure, only when the presiding Judge entertains a reasonable doubt on the point of law or usage having the force of law referred, and not merely on the importunity of pleaders.

(b) A proviso has been added to Section 113 of the Code by the Codes of Civil Procedure and Criminal Procedure (Amendment) Act, 1951 (No. XXIV of 1951). Now where a Court finds that it is necessary for the disposal of a case to decide a question about the validity of any Act, Ordinance or Regulation and the Court is of the opinion that the Act, Ordinance of Regulation is invalid or inoperative but has not been so declared by the High Court of that State or the Supreme Court, the Court shall refer the matter in the manner laid down for the opinion of the High Court.

"Reasonable doubt on a point of law"

A subordinate Court cannot be supposed to entertain a reasonable doubt on a point of law if it has been decided clearly in a ruling of the High Court, unless some doubt has been thrown on the correctness of the same by a ruling of the Supreme Court. Nor has an Appellate Court, which has no jurisdiction to hear an appeal, any jurisdiction to make a reference.

Mode of reference

In making a reference the presiding Judge should be careful to conform to the requirements of Order XLVI, Rule I, of the Code of Civil Procedure by:

(i) drawing up a statement of the facts;

(ii) stating the point on which doubt is entertained; and

(iii) stating his opinion on such point.

Each of the above statement should be precise and clear, or the High Court will find itself compelled to return the reference for amendment under Order XLVI, Rule 5, of the Code of Civil Procedure.

References under Order XLVI, Rule 7

It should also be noted that, by the terms of Order XLVI, Rule 7, a reference may be made only when it appears to the District Court that a Court subordinate to it has by reason of erroneously holding a suit to be cognizable by a Court of Small Causes, or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested; unless this condition is fulfilled – that is, unless the Court is itself of opinion that one of these errors has been committed, – it has no power to refer; when that condition is fulfilled, the Court still has a discretion to make or refuse to make a reference unless it be required to make it by a party. In the latter case, the Court is bound to make a reference.

References by Sub-Judge as a Court of appeal

If a Subordinate Judge sitting as a Court of appeal is of opinion that a reference ought to be made under Order XLVI, Rule 7, of the Code of Civil Procedure, he should submit the record of the case to the District Judge for orders with a statement of reasons.

Character of suit to be described in reference

It is essential that the true character of the suit should be described with precision and accuracy in the heading of the reference.

Parties should be heard before making reference

A reference by a Civil Court under Order XLVI, Rule 6 or 7, of the Code of Civil Procedure shall not be made until the parties to the suit have had an opportunity of showing cause against such reference in the Court which proposes to make it.

Objections of parties to be placed of record

The Court making a reference under any of the sections mentioned in the preceding paragraph shall in its order of reference, certify that such opportunity has been given, and shall place on record the objections, oral or written (if any), of any party against the making of such reference.

Notice of references to parties

The Court making the reference shall give notice, either orally or in writing, to such parties as attended or are represented in Court when the order of reference is made –

(i) that the attendance of the parties in the High Court at the hearing of the reference is not obligatory; (ii) that any party desirous of attending at such hearing must enter an appearance at the office of the Deputy Registrar on or before a date to be specified in the notice.

Date fixed for appearance in High Court

The date specified shall be such as to allow a reasonable time for the parties to appear in the High Court, and shall be a date not less than one month in advance of the date of making the reference.

Court shall satisfy that parties have been informed

The Court shall certify in its order

(1) that the notice required by paragraph 12 has been duly given, orally or in writing as the case may be, and

(2) the date specified in such notice.

While making reference under this rule court is not to submit its opinion on merits. Ganga Datt and others v. Mandir Narayan Deota, AIR 1953 HP 31. Necessary records to be sent along with order of reference The Court making the reference shall forward, with its order, the record of the suit in which the reference is made and of all proceedings (if any) by way of execution or otherwise in such suit subsequent to the decree, and also the records of any other connected proceedings necessary for consideration of the reference in the High Court.

Necessary records to be sent along with order of reference

The Court making the reference shall forward, with its order, the record of the suit in which the reference is made and of all proceedings (if any) by way of execution or otherwise in such suit subsequent to the decree, and also the records of any other connected proceedings necessary for consideration of the reference in the High Court.

Reminder from High Court if no reply received

Whenever it is found that a reference made to the High Court has not been replied to, or intimation of a date having been fixed given within two months of making such reference, the attention of the Registrar should be drawn to the fact.

Review: Section 114 of Code of Civil Procedure, 1908

Review means re-examination or re-consideration of its own decision by the very same court. An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit' which means an act of the court shall prejudice no man. The other maxim is, 'lex non cogit ad impossibillia' which means the law does not compel a man to do that what he cannot possibly perform.

Section 114 of the Code of Civil Procedure provides for a substantive power of review by a civil court and consequently by the appellate courts. Section 114 of the code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47, Rule 1 of the CPC.

The section is worded as follows:

114. Review- Subject as aforesaid, any person considering himself aggrieved –

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by, this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

An 'aggrieved' person is one who has suffered a legal grievance, i.e., against whom a decision has been pronounced which has wrongfully affected his title or wrongfully deprived him of something which he was entitled to.

All decrees or orders cannot be reviewed. The right of review has been conferred by section 114 and Order XLVII of the Code.

Condition precedent

The conditions to invoke Section 114 have been dealt with in Order XLVII Rule 1 of the CPC. They are:

1. **Discovery of new and important matter or evidence**

   An application for review on the ground of discovery of new evidence should show that:

   (i) such evidence was available and of undoubted character;

   (ii) that the evidence was so material that its absence might cause a miscarriage of justice; and

   (iii) that it could not with reasonable care and diligence have been brought forward at the time of the decree.

   The applicant has, however, to satisfy that there was no remissness on his part.

2. **Mistake or error apparent on the face of the record**

   Whether there is a mistake or error apparent on the face of record in a case depends on individual facts. However, it must be borne in mind, that in order to come to the conclusion that there is a mistake or error apparent on the face of record, it must be one which is manifest on the face of record. The error or mistake be so manifest, so clear, that no court would permit such an error or mistake to remain on the record. In coming to the finding that a mistake or error is apparent on the face of record, the court is not required to look into other evidence. Such mistake or error should appear in the order itself or from any other document, which it referred in the said order. If such error occurs then the court is definitely bound to review such judgment.

   The mistake is not limited to a mistake of fact. It may be of law. It should be an error which can be seen by a mere perusal of the record without reference to any other extraneous matter. Where, therefore, the legal position is clearly established by a well-known authority, but the Judge has by some oversight failed to notice the same and thus gone wrong, it will be a case coming within the category of an error apparent on the face of the record. The error has to be patent, and an ordinary error of law or a mere failure to interpret a complicated point of law correctly is not an error of law apparent on the face of the record.

   Failure of the court to take into consideration an existing decision of the Supreme Court taking a different or contrary view on a point covered by its judgment would amount to a mistake or error apparent on the face of the record. But a failure to take into consideration a decision of the High Court would not amount to any mistake or error apparent on the face of the record.

In view of the Explanation added by the amendment of 1976, a subsequent decision of the Supreme Court or a larger Bench of the same court taking a contrary view on the point covered by the judgment does not amount to a mistake or error apparent on the face of the record.

3. **Any other sufficient reason**

The phrase "any other sufficient reason" means a reason at least analogous to those specified in the rule immediately previously, namely, excusable failure to bring to the notice of the court new and important matter or evidence or mistake or error apparent on the face of the record. These words have been interpreted in Chajju Ram v. Neki, to mean a reason sufficient on grounds at least analogous to those specified in 1 and 2.

Difference between Appeal and Review

It is well-settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, C.P.C. There are definitive limits to the exercise of the power of review and it cannot be exercised on the ground that the decision was erroneous on merits. That is the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate Court.

Scope of an application for review is much more restricted than that of an appeal. The Supreme Court in Lily Thomas vs. Union of India, AIR 2000 SC 1650, has held that the power of review can only be exercised for correction of a mistake and not to substitute a view and that the power of review could only be exercised within the limits of the statute dealing with the exercise of such power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained.

Where an appeal has been preferred a review application does not lie. But an appeal may be filed after an application for review. In such event the hearing of the appeal will have to be stayed. If the review succeeds the appeal becomes infructuous for the decree appealed from is superseded by a new decree. No court can, however, review its order after it has been confirmed on appeal.

A party who is not appealing from a decree or order may, however, apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

Order XLVII of CPC deals with Review

Rule 1 is the primary rule that has been discussed above. Some of the other important rules under Order XLVII are:

Order XLVII, Rule 4: No application for review, however, shall be granted without previous notice to the opposite party to appear and oppose the application. It shall also not be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge at the time of the passing of the decree or order, without strict proof of such allegation.

Order XLVII, Rule 6: Where the application for a review is heard by more than one judge and the court is equally divided, the application shall be rejected. Where there is a majority, the decision shall be according to the opinion of the majority.

Order XLVII, Rule 7: An order of the court rejecting the application for review shall not be appealable, but an order granting the application may be objected to at once by an appeal from the order granting the application or in any appeal from the decree or order finally passed or made in the suit.

In case the application has been rejected on failure of the applicant to appear, the court may restore the rejected application to the file on being satisfied that the applicant was prevented by sufficient cause from appearing upon such terms as to costs or otherwise as it thinks fit.

Order XLVII, Rule 9: No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

Revision

Section 115 of Code of Civil Procedure 1908

Section 115 reads as under:

(1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears-

  (a) To have exercised a jurisdiction not vested in it by law, or

  (b) To have failed to exercise a jurisdiction so vested, or

  (c) To have acted in the exercise of its jurisdiction illegality or with material irregularity;

the High Court may make such order in the case as it thinks fit.

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation: In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.

Scope

Section 115 applies to jurisdiction alone, the irregular exercise or non-exercise of it or the illegal assumption of it. Section 115 empowers the High Court to satisfy itself on three matters:

(a) that the order of the subordinate court is within its jurisdiction;

(b) that the case is one in which the court ought to exercise jurisdiction; and

(c) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.

In order for Section 115 to come into picture, it is necessary to establish three conditions precedent for calling upon and for requesting the revisional court to exercise the revisional jurisdiction. These conditions are as under:

(a) That the order impugned amounts to be a case decided;

(b) That the order impugned is not directly liable to be challenged by way of appeal from the order itself before the same court before which the revision has been filed;

(c) That the order impugned suffers from jurisdictional error.

The power to interfere under Section 115 is much circumscribed. The section is not directed against conclusion of law or fact in which the question of jurisdiction is not involved. Unless the lower appellate court had exercised jurisdiction where it had none or exercised it illegally or with material irregularity, the High Court cannot interfere with the order of the lower appellate court even when the order sought to be revised be erroneous or not in accordance with the law.

In the exercise of revisional powers it is not the duty of the High Court to enter into the merits of the evidence; it has only to see whether the requirements of the law have been duly and properly obeyed by the court whose order is the subject of the revision and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order.

The decision of the subordinate court on all questions of law and fact not touching its jurisdiction is final and however erroneous such a decision may be, it is not revisable under sub-section (a) and (b) of Section 115. On the other hand, if by an erroneous decision on a question of fact or law touching its jurisdiction, e.g., on a preliminary fact upon the existence of which its jurisdiction depends, the subordinate court assumes a jurisdiction not vested in it by law or fails to exercise a jurisdiction so vested, its decision is not final, and is subject to review by the High Court in its revisional jurisdiction under the sub-section.

The words ‘acting illegally’ would mean acting in breach of some provisions of law and the words ‘acting with material irregularity’ would mean committing some error of procedure and in the course of proceedings, which is material in the sense that it may have affected the ultimate decision. Therefore, it is only when a court decides a case perversely that it can be said to act illegally or with material irregularity in the exercise of its jurisdiction and the other errors of questions of law or procedure are outside the scope of clause (c) of Section 115(1) of the Civil Procedure Code. The mere fact that the decision of the lower court is erroneous, whether it be upon a question of fact or law, does not amount to an illegality or material irregularity. To come to an erroneous conclusion does not amount to acting with material irregularity or illegality and a court has much jurisdiction to pass a correct order as a wrong one.

It may be pointed out that the jurisdiction under Section 115 of the Code is a discretionary one. The Supreme Court has observed in *Major S.S. Khanna* v. *F.J. Dhillon*, A.I.R. 1964 S.C. 497, that the exercise of jurisdiction under Section 115, C.P.C., is discretionary and that the court is not bound to interfere merely because the conditions in clauses (a), (b) and (c) of Section 115(1) are satisfied. The fact that another remedy is available to an aggrieved party by way of any appeal from the ultimate judgment or decree, is one of the relevant considerations for refusing to exercise discretion under Section 115(1), C.P.C.

Under Section 115, the High Court can call for the record of the case suo motu and revise the same if it finds that the subordinate court exercised a jurisdiction not vested in it by law or failed to exercise the jurisdiction so vested or acted in the exercise of its jurisdiction illegally or with material irregularity. Therefore, if the case is not presented by a duly authorised person and the court finds that the impugned order falls within the purview of Section 115, it can suo motu revise it.

‘Any case which has been decided’

The power of the High Court under Section 115 is exercisable in respect of ‘any case which has been decided’. The word “case” is something wider but not wide enough to include every order passed by a court during the pendency of a suit. It would include a decision on any substantial question in controversy between the parties affecting their rights, even though such order is passed in the course of the trial of the suit.

A case can be said to have been decided when any rights or obligations for the parties are adjudicated upon. The orders which are passed in a routine manner and do not decide any substantial right or question affecting rights of the parties cannot be said to amount to a case decided.

The Supreme Court observed in *Major S.S. Khanna* v. *Brig. F.J. Dhillon*, that the expression ‘case’ is a word of comprehensive import; it includes a civil proceeding and is not restricted by anything contained in Section 115 of the Code to the entirety of the proceeding in a civil court. To interpret the expression 'case' as an entire proceeding only and not a part of the proceeding imposes an unwarranted restriction on the exercise of powers of superintendence and may result in certain cases in denying relief to the aggrieved litigant.

The "case decided" is to be construed in its wider amplitude giving realistic meaning to these words. "Case decided" does not necessarily mean case finally adjudicated, rather each decision which terminates a part of the controversy though the suit or the case may not be finally decided, shall come within the ambit of the term "case decided".

Illegally or with material irregularity

The words 'illegally' and 'material irregularity' in Section 115 do not cover either error of fact or of law. These words do not refer to the decision arrived at but to the manner in which it is reached. The errors as contemplated relate to material defects of procedure.

Section 115 empowers the High Court to satisfy itself upon three matters, viz.,

(a) that the order of the subordinate court is within its jurisdiction,

(b) that the case is one in which the court ought to exercise jurisdiction, and

(c) that in exercising jurisdiction the court has not acted illegally that is in breach of some provision of law, or with material irregularity.

If the High Court is satisfied upon those three matters, it has no power to interfere because it differs, however profoundly, from the conclusions of the subordinate court upon questions of fact or law. The High Court will not interfere with an incorrect decision of the lower court where there is no question of lack of jurisdiction or material irregularity in procedure. Where there is a willful disregard or conscious violation of a rule of law or procedure the case is one of material irregularity calling for interference in revision.

APPLICABILITY OF CIVIL PROCEDURE CODE ON TRIBUNALS

The Code of Civil Procedure is applicable on the Tribunals in a restricted manner. There is no straight jacketed rule which can be applied to find out which provision of the Civil Procedure Code is applicable on a particular tribunal. The provisions of Civil Procedure Code are made applicable on the tribunals by the legislations (including delegated legislation) controlling the functioning of the tribunal.

Applicability of Civil Procedure Code on National Company Law Tribunal

Rule 57 of NCLT Rules: Issue of process of execution

According to rule 57 of NCLT Rules, on receipt of an application under rule 56 the NCLT shall issue a process for execution of its order in such Form as provided in the Code of Civil Procedure, 1908. Further, NCLT shall consider objection, if any, raised by the respondent and make such order as it may deem fit and shall issue attachment or recovery warrant in such form as provided in the Code of Civil Procedure, 1908.

Rule 126 of NCLT Rules: Form and contents of the affidavit

An affidavit before NCLT shall conform to the requirements of order XIX, rule 3 of Civil Procedure Code, 1908.

Rule 131 of NCLT Rules: Application for production of documents, form of summons

Except otherwise provided in the NCLT Rules, discovery or production and return of documents shall be regulated by the provisions of the Code of Civil Procedure, 1908.

Rule 135 of NCLT Rules: Procedure for examination of witnesses, issue of Commissions

The provisions of the Orders XVI and XXVI of the Code of Civil Procedure, 1908, shall mutatis mutandis apply in the matter of summoning and enforcing attendance of any person and examining him on oath and issuing commission for the examination of witnesses or for production of documents.

Applicability of Civil Procedure Code on SEBI and SAT

SEBI

According to section 11(3) of SEBI Act, 1992, **n**otwithstanding anything contained in any other law for the time being in force while exercising the powers under clause (i) or clause (ia) of sub-section (2) or sub- section (2A) of section 11 which is relating to function, SEBI shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely :

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;

(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A)

(v) issuing commissions for the examination of witnesses or documents.

SAT

According to section 15U of SEBI Act, 1992, the Securities Appellate Tribunal (SAT) shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of SEBI Act, and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

Further, the Securities Appellate Tribunal shall have, for the purposes of discharging their functions under SEBI Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely :

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte;

(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(h) any other matter which may be prescribed.

In the case of *Shri G.S. Rathore* vs *The Union of India (UOI)* decided on 21st June, 2007, it has been decided by the Bombay High Court that it is not the Legislative intent that the provisions of the Code should be applicable stricto senso. The paramount precept of administrative procedure before the tribunal is the principle of natural justice, added by the own prescribed procedure of the tribunal. (Of course, further to add to the same provision of Section 22(3) of the Act, to what extent the tribunal shall be vested with the power of the civil court). The application of the provisions of the Code would, therefore, be limited and restricted to the extent specified specifically in the provisions of Section 22(3) of the Act.

LESSON ROUND-UP

- The word jurisdiction is used in various contexts. It means legal authority, extent of power and limitation on such powers. It is a term of comprehensive import embarrassing every kind of judicial action. It means power and authority of the court to hear and determine a judicial proceeding and power to render particular judgement in question.
- The eCourts Project was conceptualized on the basis of the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005" submitted by eCommittee, Supreme Court of India with a vision to transform the Indian Judiciary by ICT enablement of Courts.
- In view of the multifarious activities of a welfare state, the legislature cannot work out all the details to fit the varying aspects of complex situations. It must necessarily delegate the working out of details to the executive or any other agency. Therefore, one of the most significant developments of the present century is the growth in the legislative powers of the executives. There is no such general power granted to the executive to make law, it only supplements the law under the authority of legislature.
- Under the Constitution of India, Articles 245 and 246 provide that the legislative powers shall be discharged by the Parliament and State legislature. The power of Legislature to delegate its legislative power is not prohibited in the Constitution.
- Law making by the administration can take various forms. It can be in the form of rules, regulations, bye-laws etc. In the case of this normal type of delegated legislation, the limits of the delegated power are clearly defined in the enabling statute and they do not include such exceptional powers as the power to legislate on matters of principle or to impose taxation or to amend an act of legislature.
- In India, we have courts at various levels – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. They form a hierarchy with the Supreme Court of India at the top, followed by High Courts of respective states with District and Sessions Judges sitting in District Courts and Magistrates of Second Class and Civil Judge (Junior Division) at the bottom.
- Bharatiya Nagarik Suraksha Sanhita, 2023 is the procedural law for conducting a criminal trial in India. The procedure includes the manner for collection of evidence, examination of witnesses, interrogation of accused, arrests, safeguards and procedure to be adopted by police and courts, bail, the process of criminal trial, a method of conviction, and the rights of the accused of a fair trial by principles of natural justice.
- A reference to the High Court by a District Judge or Judge of a Court of Small Causes, under the provisions of Section 113 and Order XLVI, Rule I of the Code of Civil Procedure, should be made only when the presiding Judge entertains a reasonable doubt on the point of law or usage having the force of law referred, and not merely on the importunity of pleaders.
- Review means re-examination or re-consideration of its own decision by the very same court. An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit' which means an act of the court shall prejudice no man. The other maxim is, 'lex non cogit ad impossibillia' which means the law does not compel a man to do that what he cannot possibly perform.

- The Code of Civil Procedure is applicable on the Tribunals in a restricted manner. There is no straight jacketed rule which can be applied to find out which provision of the Civil Procedure Code is applicable on a particular tribunal. The provisions of Civil Procedure Code are made applicable on the tribunals by the legislations (including delegated legislation) controlling the functioning of the tribunal.

GLOSSARY

Delegated Legislation: This supplementary legislation is known as 'delegated legislation' or 'subordinate legislation'. These legislations confer legislative powers upon administrative authorities.

Ultra Vires: The term ultra vires means outside and beyond the authority.

Ex-Parte: Ex-parte means deciding a matter without hearing the other party.

Summary Trial: Cases which generally take only one or two hearings to decide the matter comes under this category. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money.

Precedent: Precedents are previously settled position of Law by adjudication.

Review: Review means re-examination or re-consideration of its own decision by the very same court.

Revision: According to Section 115 of Code of Civil Procedure, 1908, High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto.

Reference: In reference, a Court subordinate to the Court to make a reference to that Court, if certain conditions are satisfied.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the present day. Comment.
2. Enumerate various types of delegation of legislative power.
3. Discuss modes of control over delegated legislation.
4. Discuss procedural aspects of working of Civil Courts.
5. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money. Discuss Briefly.
6. Discuss Reference, Review and Revision under Civil Procedure Code, 1908.
7. Whether Tribunals are bound by the Civil Procedure Code, 1908. Comment.

LIST OF FURTHER READINGS

- The Law of Pleadings in India (1987); 14th Ed. Rev. by Justice K.N. Goyal, etc. Eastern Law House, Calcutta.

  P.C. Mogha

- Drafting, Conveyancing and Pleadings (1982); 2nd Ed., N.M. Tripathi (P.) Ltd., Bombay.

  G.M. Kothari and Arvind G. Kothari

Pleadings

Lesson 10

KEY CONCEPTS

■ Pleadings ■ Plaint ■ Written Statement ■ Material Facts ■ Temporary and Permanent Injunctions ■ Interlocutory applications ■ Writs ■ Petitions ■ Appeals ■ Memorandum of Appeals ■ Arguments on Preliminary Submissions ■ Arguments on Merits ■ Legal Notices

Learning Objectives

To understand:

- ➢ Pleadings and their Drafting
- ➢ Fundamental Rules of Pleadings
- ➢ Suits for Injunctions
- ➢ Drafting of Plaints
- ➢ Drafting of Written Submissions
- ➢ Notice and its drafting
- ➢ Petitions and their Drafting
- ➢ Appeals and their Drafting
- ➢ Affidavit and its drafting
- ➢ Essential concepts relating to pleadings

Lesson Outline

- ➢ Background of Indian System
- ➢ Construction of Pleading
- ➢ Introduction & Meaning
- ➢ Fundamental Rules of Pleadings
- ➢ Suits for Temporary and Permanent Injunctions
- ➢ Written Statement
- ➢ Petitions
- ➢ Writ Petition
- ➢ Indemnity Bonds & Undertakings
- ➢ Drafting of Affidavit in Evidence – Important Considerations
- ➢ Arguments on Preliminary Submissions
- ➢ Arguments on Merits
- ➢ Legal Pleadings/Written Submissions
- ➢ Witnesses in Pleadings
- ➢ Lesson Round-Up
- ➢ Glossary
- ➢ Test Yourself
- ➢ List of Further Readings
- ➢ Other References (including websites/ video links)

REGULATORY FRAMEWORK

- Civil Procedure Code, 1908
- Negotiable instruments Act, 1881
- Indian Partnership Act, 1932.
- Indian Evidence Act, 1872
- Transfer of Property Act, 1882
- The Companies Act, 2013
- Indian Contract Act of 1872
- Registration Act, 1908

BACKGROUND OF INDIAN SYSTEM

In the ancient times when the king was the fountainhead of all justice, a petitioner used to appear before the king in person and place all facts pertaining to his case before His Majesty. After such oral hearing, the King used to summon the other party and thereafter listen to the defence statements put forward by the person so summoned. There used to be some sort of cross examination or cross questioning of the parties by the King himself. Thereafter, the decision was announced. There was hardly any system of written statements; some "pleadings" did exist, although they were oral. The King and his courtiers kept on what may be called a mental record of the proceedings. Perhaps only few serious and otherwise significant cases, their decisions were recorded. Similarly, during the Mughal period also pleadings were oral in form. During British period with the establishment of Diwani Courts, High Courts etc. and with the passage of time, judicial system underwent a change. The administration at justice was separated from the executive and assigned to the court of law. Complexity resulted in enormous litigation, and oral hearing of the ancient times became almost impossible. Scribes used to keep records of all the proceedings. Gradually, this procedure was also abandoned, and the litigants were allowed to bring their claims and contentions duly drawn up to file them before the Hon'ble courts. When this change exactly happened, it is difficult to say. Experience was a better teacher; and the changes in court procedure took place not only in the light of the past experience but also in the face of expediency. Written proceedings made the task of the courts of law easier and less complicated than the earlier oral proceedings. By the turn of 19th century, the procedure of pleadings has become fairly elaborate and systematized. Pleadings has been substantially reproduced from the Code of Civil Procedure Code.

CONSTRUCTION OF PLEADING

It is a settled law that the pleadings should be construed liberally. The very object of pleadings being to certain for the guidance of the parties and the court, the material fact in issue, it follows that they are not to be too strictly, narrowly or pedantically construed. Does very document is referred to and relied on in the pleadings, the contents of the document might well be considered as constituting a part of the pleadings and when such document happens to be a notice given by the landlord to the tenant relating to the subject matter of the controversy, there is all the more reasons to treat the contents of the document as part of the pleading and to fix the opposite party with the knowledge of its contents.

INTRODUCTION & MEANING

When the civil codes came to be drafted, the principles of pleadings were also given statutory form. Vide Order VI Rule 1 of the Code of Civil Procedure, 1908 "Pleading" shall mean 'plaint' or 'written statement'. Mogha has elaborated this definition when he remarked that "pleadings are statements in writing drawn up and filed by each party to a case, stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer".

Pleading includes plaint and written statement.

Before the trial of a civil suit starts, it is highly desirable that the Court should know exactly what it has to decide upon, and the parties should know exactly what they are contesting about. The most satisfactory method of achieving this object would be one by which each party in turn is obliged to state his own case, and answer the case of the opponent before the trial comes on. Such statement of the parties and the replies to them are known as pleadings. The present day system of pleadings in our country is based on the provisions of the Civil Procedure Code, 1908 supplemented from time to time by rules in that behalf by High Courts of the States. There are rules of the Supreme Court and rules by special enactments as well. For one, words 'plaints' and 'complaints' are nearly synonymous. In both, the expression of grievance is predominant. When a suitor files a statement of grievance, he is the plaintiff and he files a 'complaint' containing allegations and claims remedy. As days passed, we have taken up the word 'Plaint' for the Civil Court and the word 'Complaint' for the Criminal Court. Section 26 of the Code of Civil Procedure, 1908 states that every suit shall be instituted by the presentation of a Plaint or in such other manner as may be prescribed. Order IV Rule 3 states "every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf". Similarly, Order VIII Rule 1 defines that when a suit has been duly instituted, a summon may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant.

The document stating the cause of action and other necessary details and particulars in support of the claim of the plaintiff is called the "plaint". The defence statement containing all material facts and other details filed by the defendant is called the "written statement". The written statement is filed by the defendant as an answer to the contentions of the plaintiff and it contains all material and other objections which the defendant might place before the court to admit or deny the claim of the plaintiff.

Plaint	***Written Statement***
Document stating the cause of action and other necessary details and particulars in support of the claim of the plaintiff.	Defence statement containing all material facts and other details filed by the defendant.

Pleadings are, therefore, the foundation of any litigation, and must be very carefully drafted. Any material omission in the pleading can entail serious consequences, because at the evidence and argument stages, parties are not permitted to depart from the points and issues raised in the pleadings, nor can a party be allowed to raise subsequently, except by way of amendment, any new ground of claim or any allegation of fact inconsistent with the previous pleadings of the party pleading the same. In some cases, the court may allow amendment of the plaint or the written statement on the application of a party to the suit. This can be done by taking recourse to order VI Rule 17 of Civil Procedure Code, 1908. Another case of departure is where the defendant pleads for set-off or that of the counter-claim under order VIII of the Code of Civil Procedure, 1908.

Pleadings contain material facts, contentions and claim of the plaintiff, and the material facts, contentions, denials or admissions of claims by the defendants. There may also be counter claims by the defendant which may of two categories –

(i) a claim to set-off against the plaintiff's demand is covered by order VIII Rule 6, and

(ii) and independent counter claims which is not exactly set off but falls under some other statute.

While the former is permitted to be pleaded by the courts, the latter is not, but when the defendant files such counter claims, the written statements is treated as a plaint.

Object of Pleadings

The Paramount object of all rules of procedure is to regulate the business and procedure of the courts, so that justice may be done between the parties, according to their rights and interests at law and contracts. The whole object of pleading is to give a fair notice to each party of what the opponent's case is. Pleadings bring forth the real matters in dispute between the parties. It is necessary for the parties to know each other's stand, what facts are admitted and what denied, so that at the trial they are prepared to meet them. Pleadings also eliminate the element of surprise during the trial, besides eradicating irrelevant matters which are admitted to be true. The facts admitted by any parties need not be pursued or proved. Thus, the pleadings save the parties much bother, expense and trouble of adducing evidence in support of matters already admitted by a party, and they can concentrate their evidence to the issue framed by the Court in the light of the facts alleged by one party and denied by the other. The sole object of the system of pleading is to secure that both the contending parties shall know what are the real points of controversy between them in order that they may have an opportunity of bringing forward such evidence or to submit such arguments as may be appropriate to determine such points at issue between them, and to prevent surprise at the trial.

Odgers in his "Pleading and Practice" (14th Ed. At p 65) observes:

"The defendant is entitled to know what it is that the plaintiff alleges against him; the plaintiff in his turn is entitled to know what defence will be raised in answer to his claim. The defendant may dispute every statement made by the plaintiff, or he may be prepared to prove other facts which put a different complexion on the case. He may rely on a point of law, or raise a cross claim of his own. In any event, before the trial comes on it is highly desirable that the parties should know exactly what they are fighting about, otherwise they may go to great expense in procuring evidence to prove at the trial facts which their opponents will at once concede. It has been found by long experience that the most satisfactory method of attaining this object is to make each party in turn state his own case and answer that of his opponent before the hearing. Such statements or answers to them are called the pleadings."

Main Object of pleadings

1) To define the issue of fact and question of law to be decided between the parties;
2) To give fair notice of the case which has to be met so that the opposite party may direct his evidence to the issue disclosed by them; and
3) To provide a brief summary of the case of each party, which is readily available for reference and from which the nature of the claim and defence may be easily apprehended, and to constitute a permanent record of the questions raised in the action and of the issues decided therein, so as to prevent future litigation upon matters already adjudicated upon between the litigants.

Function of pleadings

The function of a pleading is not simply for the benefit of the parties but also and perhaps primarily for the assistance of the court by defining with precision for the assistance of the court the area beyond which without the leave of the court and consequential amendment of the pleadings, the conflict must not be allowed to extend.

Importance of pleadings

The importance of the art of pleading is insufficiently realised in this country. It is at least as important as any other part of the duties of an advocate. Moreover, it demands a high degree of skill, and the final form of any pleading should be stated only by advocates who have the necessary skill and experience. The case of a party is one which is set out in his pleading. No relief based on any ground not set out as pleading can be granted. A party urging a ground which is entirely a legal ground may be allowed to set it up at a later stage but plea based on a question of fact or a mixed question of law and fact cannot be allowed to be taken at a later stage. A finding based on no pleading and no evidence, cannot be sustained.

Rule of Pleading and a Rule of Proof

It is necessary to keep in mind the distinction between a rule of pleading and a rule of proof. That inconsistent pleading can be pleaded it in the alternative is a well-established rule of pleading, but the proof of a plea depends upon the provisions of substantive law.

FUNDAMENTAL RULES OF PLEADINGS

It is a rule to observe in all Courts that a party complaining of an injury and suing for redress, can recover only *secandum allegata et probate*[1]. The provisions of law under which the suit has been instituted should also be mentioned[2]. The pleas should be specifically mentioned, as the evidence cannot be looked into in the absence of a specific plea or point. When pleading contains pleas which are apparently inconsistent or irrevocable, it is not open to the court to ignore one play and act merely on the basis of another. The Court will however see the substance, if the plea is not properly worded. The four fundamental rules of pleadings are:

1) That a pleading shall contain, only a statement of facts, and not Law;
2) That a pleading shall contain all material facts and material facts only;
3) That a pleading shall state only the facts on which the party pleading relies and not the evidence by which they are to be proved;
4) That a pleading shall state such material facts concisely, but with precision and certainty.

Rule I: Facts and not Law

One of the fundamental rules of pleadings embodied in Order VI Rule 2 is that a pleading shall contain only a statement of facts and not law. The duty of the pleader is to set out the facts upon which he relies and not the legal inferences to be drawn from them. And it is for the judge to draw such inferences from those facts as are permissible under the law of which he is bound to take judicial notice. A judge is bound to apply the correct law and draw correct legal inferences and facts, even if the party has been foolish to make a written statement about the law applicable of those facts. If a plaintiff asserts a right in him without showing on what facts his claim of right is funded or asserts that defendant is indebted to him or owes him a duty without alleging the facts out of which indebtedness or duty arises, his pleading is bad.

The parties should not take legal pleas but state the facts on the basis of which such legal conclusions may logically follow and which the court would take a judicial notice of. Thus, where a party pleads that the act of the defendant was unlawful, or that the defendant is guilty of negligence, or that the defendant was legally bound to perform specific contract, such a pleading would be bad. In such cases, the plaintiff must state facts which establish the guilt or negligence of the defendant, or how the particular act of the defendant was unlawful, of the fact leading to the contract which thus bound the defendant. The plaint should only contain the recitals that would form the basis of the claim. The legal position created thereby need not be described.

Thus, in a declaratory suit, it is not enough to plead that the plaintiff is the legal heir of the deceased for this is an inference of law. The plaintiff must show how he was related to the deceased, and also show the relationship of other claimants, and other material facts to show that he was nearer in relation to the deceased than the other claimants.

Similarly, on money suit it is not enough that the plaintiff is entitled to get money from the defendant. He must state the facts showing his title to the money. For example, he should state that the defendant took loan from the plaintiff on a particular date and promised to return the money along with specified interest on a fixed date, and that he requested the defendant to return the said amount after such date but then he refused to return the money. If some witnesses were present when the money was lent or when the demand was made or when the refusal by the defendant was made, the fact should be stated specifically, for at the time of the trial the Court may order the plaintiff to adduce evidence in support of his statement, and then he can rely on the evidence of the witnesses in whose presence he had lent money or in whose presence he had made a demand for the return of the money.

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[1] *William Maleomson v. Glayton 14 Moore PC 128*

[2] *Lalta v Ambika 1968 All LJ 1133.*

In a matrimonial petition, it is not enough to state that the respondent is guilty of cruelty towards the petitioner-wife and that she is entitled to divorce. The petitioner must state all those facts which establish cruelty on the part of the respondent. She may state that her husband is a drunkard and comes home fully drunk and in a state of intoxication he inflicted physical injuries on her, she should specify dates on which such incidents took place; or that the husband used to abuse her or beat her in the presence of her friends and relations or that after her marriage she was not allowed to visit her parents or that he was forcing her to part with her dowry, giving threats of physical beating; or that immediately after her marriage till date the respondent did not even talk to her, nor he cohabited with her. It is such facts which can establish physical or mental cruelty.

In another example plaintiff files a suit for negligence and damages. It is not enough for him to state negligence. First of all, the plaintiff must state those facts which establish the defendant's duty towards the plaintiff. Thereafter, he must state how and in what manner the defendant was guilty of negligence. Thus, he must state all the facts on which his plaint is based. The inference of law to the breach of duty should be left to the Court because the correct legal principles will be applied by the Court and the plaintiff cannot even add any prayer that a particular legal conclusion which follows must be applied. The only prayer that he may add is that the relief may kindly be granted to him.

Omission to state all the facts renders the pleading defective whatever inferences of law might otherwise have been pleaded. Such a plaint may be rejected on the ground that it discloses no cause of action. The plaintiff or the defendant as the case may be, and his counsel must be on their guard not to omit any facts and straight-a-way jump to pleading containing legal interference without stating such facts.

For example, in a suit for recovery of money for the goods sold, the defendant should not just take the plea that he is not liable. Such a statement is a plea of law and can hardly stand and in spite of his good defence his case will fail. In such a case the defendant must clearly state that he did not purchase any goods from the plaintiff nor was there an agreement to do so. He may also state that though the goods were sent to him, but he did not take the delivery as he had placed no order therefore or that the goods were sold to him on credit and the money was to be paid to the plaintiff after the sale of such goods and the goods were still lying with him unsold, and that he was willing to return the goods to the plaintiff in accordance with the written or oral understanding that in case of the goods remaining unsold the same shall be taken back by the plaintiff. Such facts would be valid pleas.

In another example of a suit for defamation and damages, it is not sufficient for the plaintiff to state that the defendant defamed him and therefore he was entitled to damages or special damages. The plaintiff must state all the facts of the defendant act or acts such as his public utterances in which he named the plaintiff and made remarks about his character or profession or the publications in which he was painted in a manner as would in the opinion of a common man lower him in the eyes or estimation of society. Wherever possible, the plaintiff must give the exact words spoken or used in the entire sentence or statement and also give the general, grammatical or implied meaning of such words spoken or used. Wherever there is any ambiguity, he may take the plea of "inuendo" and state how such a remark was commonly understood by persons known to him. Thus, the plaintiff should build his case on facts from which the conclusion would naturally and logically follow.

The rule that every pleading must state facts and not law is subject to the following exceptions:

i. Foreign Law

ii. Customs

iii. Mixed question of law and fact

iv. Legal Pleas

v. Inferences of law.

Rule II: Material Facts

The word "material" means necessary for the purpose of formulating a complete cause of action. Cause of action mean – every fact which if traversed, it would be necessary for the plaintiff to prove in order to support his right to the judgement of the Court. When a litigant comes to a legal practitioner, he brings all facts and circumstances pertaining to a case. In fact, he tries to narrate each and every event which may possibly have a remote bearing upon the case. Not all such facts are important. If everything were to be included in the plaint, then the plaint is likely to become so voluminous that the learned judge is likely miss the essential track and be guided by the inessentials.

What is necessary therefore are the facts which are material; facts which have a direct and immediate bearing on the case, facts which are secondary or incidental may easily be omitted. Of course, the lawyer must weigh each fact and test its significance and relevance in relation to the given case. Marshalling of facts is what a good lawyer would always do before he sets them down in form of a plaint.

The second fundamental rule of pleading is therefore, that every pleading shall contain and contain only, a statement of the material fact as on which the party pleading relies for his claim or defence. This rule is embodied in Order VI Rule 2 and it requires that –

I. The party pleading must plead all material facts on which he intends to rely for his claim or defence as the case may be; and

II. He must plead material facts only, and that no fact which is not material should be pleaded, nor should the party plead evidence, nor the law of which a Court may take a judicial notice[3].

The rule is indeed a strict one. The question would naturally arise: what are the material facts? Indeed, every fact on which the cause of action or the defence is founded is material fact. The purpose entertained by the rule is that every unnecessary and irrelevant fact need not be brought on record, and the rule acts as a damper to the litigants, habit of stating all details that strike their mind, whether such details are relevant or not, it necessitates the process of elimination on the part of the litigant. All facts which will be required to be proved at the trial in order to establish the existence of a cause of action or defence are material facts. Then there are other facts which do not directly establish the cause of action or defence, but which nonetheless are material facts in that the party pleading them has an inherent right to prove them at the trial.

Whether a particular fact is material or not will depend upon the circumstances of the case. A fact may not appear to be material at the initial stage but it may turn out to be material at the time of the trial. Thus if a party is not able to decide whether a fact is material or not, or if he entertains a reasonable doubt as to the materiality of a particular fact, it would be better to include than to exclude, because if a party omits to state or plead any material fact, he will not be permitted to adduce evidence to prove such a fact at the trial unless the pleading is amended under Order VI Rule 17. The general rule is that a party cannot prove a fact which he has not pleaded.

The task of a lawyer is therefore rather difficult. He must observe the rule that only material facts are to be pleaded, and, at the same time, he must not exclude any fact which may seem apparently unnecessary but which may turn out to be material as the trial progresses. Thus, he must visualize all the possible directions or dimensions which the pleadings are likely to assume. An experienced lawyer would marshal all the facts placed before him by his client and by correlating them, and after carefully examining the interplay between such facts, decide what facts are material to establish the cause of action or defence. There after he would prepare or rough or a mental outline of the pleading and submit all such facts to a close analysis in order to make sure whether if he is able to prove all such material facts he would succeed. By a process of elimination, he must also see whether by excluding certain seemingly immaterial facts from the outline he has prepared, he would still succeed. If he can return an affirmative answer, he should exclude such irrelevant facts, but if the answer be in the negative, then he must include them another way of testing the materiality of the facts would be to ask whether by proving a particular fact, he would certainly establish the cause of action or the defence.

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[3] *Hari Shankar Jain v. Sonia Gandhi AIR 2001 SC 3689*

"Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence.

The idea is that the pleading should not include any fact which would not assist the party even if such a fact is proved. And why at all waste energy, time and money is establishing the correctness or otherwise of a fact which does not advance the party's case? One of the reasons why the litigation drags on for years is that the litigants do not come to the point, there being much about nothing. In India, the courts are filled with all sorts of litigation. The lawyers are taking briefs of all sorts and they are extremely busy. They have hardly any time to examine the materiality of the facts narrated to them by their clients. The pleadings, therefore, become unwidely and voluminous, so much so that at the time of framing the issues, the matter becomes really a hard nut to crack. The litigation drags on withstanding the wishes of the parties to the contrary. It is the duty of the lawyers to ensure that the pleadings conform to the rules laid down in the code of civil procedure. They should be guided more by their own sense of proportion rather than succumb to every whim or eccentricity of their clients.

Instances of Material Facts: In a suit for damages for injuries sustained in a collision, the plaintiff in framing his statement of claim should set out the circumstances of the collision, so far as they are known to him, with clearness and accuracy to enable his adversary to know the case he has to meet, he should also state in particular terms the particular acts of negligence which, according to him, caused the collision.

In a suit for ejectment of a trespasser from the land and for injunction it is material to allege that defendant "threatens and intends to repeat the illegal act" similarly, if a party seeks a stay order against any authority's act of demolition his premises, shop or building he must allege that he is owner of the property and the plans or the map thereof was duly sanctioned by the appropriate authority. Or if a government land, he must allege that he has been in undisturbed possession thereof for over twelve years. Such facts are material, because if proved, they will establish the cause of action.

In a suit for defamation, it is material to allege that the words were intended to defame the plaintiff or at least they were so understood by men at large, if the words are ambiguous, then "innuendo" must be pleaded that they were ironically used or were intended so to be understood.

Where a party claims the benefit of a special rule or custom then he must allege all facts which bring the case within the ambit of that special rule or custom. For example, where a marriage between two sapindas or between two persons within the degrees of prohibited relationship is challenged in some property matter, the party that is challenging the validity of the marriage must allege that there was no custom governing the parties which permitted or sanctioned such a marriage between sapindas. It is material to allege the existence of a long-established family or caste custom governing the parties to the marriage which permitted or sanctioned such a marriage.

In a money suit, it is material to allege part-payment of the loan and also any other fact which gives a new lease of three years' time to the loan in order to save the suit from the bar of limitation.

When a plaintiff bases his claim on some document, it is material to state the effect of such a document. For example, where the case is based on a sale-deed, it is material to state that a particular person has sold property to him by a sale-deed dated so and so which was duly registered.

In a suit for specific performance of a contract, it is material to allege that the plaintiff has always been willing and is willing to perform his part of the contract.

Example of Facts not Material

In a suit on a promissory note, it is not material to state that the plaintiff requested the defendant to make the payment and he refused, because no demand is necessary when the promissory note becomes due and it is payable immediately.

Similarly in a suit for recovery of money for the goods sold, it is not material to state that the goods belonged to the plaintiff or that the goods were sold to the defendant on the belief that he would honestly make the payment.

In the case of damages, general damages are presumed to be the natural or probable consequence of the defendant's act. Such damages need not be proved. But special damages will not be presumed by law to be the consequence of the defendant's act but will depend on the special circumstances of the case. Therefore, it will have to be proved at the trial that the plaintiff suffered the loss and also that the conduct of the defendant resulted in the loss so suffered by the plaintiff. In such cases the proof of special damages is essential to sustain an action. A person has no right of action in respect of a public nuisance unless he can show some special injury to himself which is over and above what is common to others.

Thus, it is clear that whereas general damages may not be pleaded the special damages must be alleged, and all facts on which such special damages are based are material to the pleading. They are material because they will have to be proved. All such facts must, therefore, be mentioned or stated with necessary particulars to show what special damage the plaintiff suffered. For example, in a suit for defamation it will have to mentioned that services of the plaintiff were terminated as a result of a particular article which damaged the professional reputation of the plaintiff so much salary which he might have continued to get but for the publication of the defamatory article.

Exception to the General Rules: The second fundamental rule of pleading, namely, that every pleading must state all the material facts and the material facts only is subject to the following well known exceptions:

i. **Condition Precedent**: The performance of occurrence of any condition precedent need not be pleaded as its averments shall be implied in the pleading. But where a party chooses to contest the performance or occurrence of such condition, he is bound to set-up the plea distinctly in his pleading. This follows from the provision contained in Order VI Rule 6 C.P.C. which runs thus:

   "Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading."

   For example, X agrees to build a house for Y at certain rate. A condition of the contract is that payment should only be made upon the certificate of Y's architect that *** amount is due. If X desires to file a suit for money against Y, the obtaining and presenting of the certificate from Y's architect is a condition precedent to X's right of action. Here it is not necessary of Y to state in his plaint that he has obtained the said certificate. He can draft a plaint showing a good *prima facie* right to the agreed amount without mentioning any certificate. It will be for Y to plead that the architect has never certified that the amount is due.

ii. **Presumption of Law**: Order VI Rule 13, C.P.C., provides that neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied. For example, in a suit on a promissory note the plaintiff need not allege consideration as Section 118 of Negotiable instruments Act, 1881 raises a presumption in his favour. It is also not necessary to state that the defendant executed the bond of his own free will and without any force or fraud because the burden of proving any fact invalidating the bond lies upon the defendant. In *Sethani v. Bhana*[4], a sale deed was executed by a tribal woman who was old, illiterate and blind, in favour of one of her relatives with whom she was living till her death and was dependent on him. It was held that it was upon that relative to prove that the sale-deed was executed under no undue influence. A party should not plead anything which the law presumes in his favour.

Regarding legal presumptions, the exception applies to only such facts as the court "shall presume" and not to those facts which the court may presume", and therefore the facts falling under the latter class must be pleaded.

iii. **Matters of Inducement**: Another exception to the general rule is regarding facts which are merely introductory. Such facts only state the names of the parties, their relationships, their professions and such circumstances as are necessary to inform the Court as to how the dispute has arisen. Such facts are hardly necessary or material to the pleading, but they are generally tolerated and are set in the pleadings by both the parties in order to facilitate the court to take a stock of the situation of the parties. It is better if such prefatory remarks are cut down to the minimum.

Rule III: Facts not Evidence

The third fundamental rule of pleadings is that only facts must be stated and not the evidence there of as there is a tendency among the litigants to mix up the bare facts with the facts which are in realty the evidence. At the stage of pleading, the Court and the opposite party should be supplied with the facts and such contentions on which the claim is founded; the plaintiff must keep the facts in evidence for a later stage of evidence. Order VI Rule 2 of C.P.C. enjoins that every pleading shall contain a statement of the material facts on which the party pleading relies for his claim or defence but not the evidence by which they are to be proved. While drafting a plaint, a lawyer must distinguish between facts which are asserted and which have to be established through evidence whether documentary or oral, and facts which are, by themselves, in the nature of evidence. At the initial stage only, the former facts have to be narrated, and when the state of evidence comes, then the other facts will be represented as a part of evidence in order to establish the first set of facts. The reason behind the rule stating evidence is that if the evidence were also allowed to be stated in the pleading, then there shall remain no limit of details and the chief object of the pleading would disappear. Evidence also consists of facts. Then how to distinguish between the two kinds of facts (i.e., material facts and evidence)? Long back in *Ratti Lal v. Raghu AIR 1954 VP 53*, the question was answered thus: Material facts are those facts which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Evidence also consists of facts and in order to distinguish between the two kinds of facts, the material facts on which the party pleading relies for his claim or defence are called *facta probanda* and the facts by means of which they (i.e., material facts) are be proved are called *facta probantia*.

(a) ***Facta probanda*:** The facts which are to be proved. These are the facts on which a party relies and are ought to be stated in the pleading.

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[4] *AIR 1993 SC 956.*

(b) ***Facta probantia***: These are the facts which are not to be stated because by their means *facta probanda* are proved. Thus, these facts are the evidence as to the existence of certain facts on which the party relies for his cause of action or defiance as the case may be. *Facta probanda* are not facts in issue, but they are relevant in that at the trial their proof will establish the existence of facts in issue. No doubt in certain cases both the facts in issue and their facts in evidence are mixed up and are almost indistinguishable. They should not be stated in the pleading.

For ex., A was married to B in accordance with a particular custom governing marriage between A and B. In this case the "custom" is a both fact in issue and a fact in evidence, because once the custom is proved, then the marriage also, stands proved. In the pleading, it is sufficient to allege that the marriage was celebrated in accordance with a particular custom. At the evidence stage, it will be sufficient to refer to the manual of customary law which records customs.

The following rules have been enacted under the Code of Civil Procedure, 1908 and hereunder we elaborate them with the help of suitable illustrations:

a. **Mental Condition:** Order VI Rule 10 clearly says that wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred. Thus, it is sufficient to allege that the defendant has cheated the plaintiff to the extent of Rs. 10,000/. It is not necessary, nor would it be in order, to plead how the defendant has cheated the plaintiff. The "how" part would be evidentiary and should not be pleaded. In a suit for malicious prosecution, the plaintiff should only allege that the defendant was actuated by malice in prosecuting him. The details of any previous hostility of the defendant's previous conduct towards the plaintiff should not be stated.

b. **Notices:** Rule 11 of Order VI lays down that wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact unless the form or the precise terms of such notice or the circumstances from which such notice is to be inferred, are material. In many cases notice has to be alleged as a material fact. For example: In a suit to recover trust property from a person to whom a trustee has given it in breach of the trust or in a suit where priority for subsequent transfer is claimed. In such cases, it is sufficient to allege notice as a fact. It is not necessary to state the entire from or precise words of the note, nor any other circumstances from which such a notice could be inferred sometimes, however, the form or the precise words of the notice are material under must be alleged. For example: where the plaintiff claims to have determined the monthly tenancy by 15 days' notice to quit, the pleading should state "On 14th Jan. dated, the plaintiff served upon the defendant a written notice calling upon him to vacate the house and deliver up possession to him on the expiry of January the 31st. In such cases the precise form and words of the notice are material and must therefore be clearly stated in the pleading.

c. **Implied Contract or Relation:** Order VI Rule 12 directs that wherever any contract or any rotation between any persons is to be implied from a series of letter or circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters conversations or circumstances without setting them out in detail. And if in such case the person pleading desires to rely in the alternative upon more contracts or relations than one as to be implied form such circumstances he may state the same in the alternative. The reason for this rule is that what is really material is the effect of the letter or conversation etc. which are only a part of evidence. Take the case of carrier's contract. The moment the goods are accepted to be carried to a particular destination and the receipt is issued, there is an implied contract, and the receipt for the goods is an evidence of the contract. In this case, it would be sufficient to plead the implied contract by making a reference to the receipt issued. The evidence of the receipt and other matters will come up later. If any contract is to be inferred from letters, the dates of the letters must be given.

d. **Presumptions of Law:** Order VI Rule 13 states that neither party need in any pleading allege any matter of fact which the law presumes in this favour or as to which the burden of proof lies up-on the other side unless the same has first been specially denied. (e.g., consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

Exception: The only exception to the third fundamental rule of pleadings is to be found in the case of writ-petitions and election-petitions. In such petitions, it is necessary to state matters of evidence in support of the allegations made therein.

Rule IV: Facts to be stated concisely and precisely

Order VI Rule 2 enjoins that every pleading must state the material facts concisely, but with precision and certainty. It is a rule to be observed in all courts that a party complaining of an injury and suing for redress, can recover only *secundum allegata et probata*. The material facts should be stated in the pleading in a concise form but with precision and certainty the pleading shall be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figure. What this rule means is that the pleading should be brief and to the point. There should be no obscurity or vagueness or ambiguity of any sort otherwise the very purpose of pleading will be defeated. Another point to remember is that no doubt brevity and conciseness are the rule, but brevity should not be at the cost of precision or clarity. Thus, where brevity and precision cannot be achieved without clarity, prolixity in pleading would be justified. If the facts stated in the pleading are all material, then they all must be alleged notwithstanding the prolixity that might cause.

In order to bring precision, conciseness and clarity, a lawyer should have a good command over the language and grammatical structure, and should know the exact meaning of the words. Longer and complex sentence which is likely to become ambiguous should be avoided.

The following points should be kept in mind while drafting a pleading: -

a) The names of persons and places should be accurately given and correctly spelt; spellings adopted at one place should be followed throughout the pleading.

b) Facts should be stated in active and not in the passive voice omitting the nominative.

c) All circumstances and paraphrases should be avoided.

d) 'Terse', 'Short', 'Blunt' sentences should be used as far as possible. All 'its' and 'buts' should be avoided.

e) Pronouns like "he" "she" or "that" should be avoided if possible. Anyway, such pronouns when used should clearly denote the person or the thing to which such pronouns refer.

f) The plaintiff and the defendant should be referred not only by their names. It is better to use the word "plaintiff' or "defendant".

g) Things should be mentioned by their correct names and the description of such things should be adhered to throughout.

h) Where an action is found on some statute, the exact language of the statute should be used.

i) In any pleading, the use of "if', "but" and "that" should be, as far as possible, avoided. Such words tend to take away the "certainty" and can cause ambiguity.

j) Necessary particulars of all facts should be given in the pleading. If such particulars are quite lengthy, then they can be given in the attached schedule, and a clear reference made in the pleading. Repetitions should be avoided in pleadings.

k) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph (Order VI Rule 2). The division of the pleading into paragraphs should be so done as to endure that each paragraph deals with one fact. At the same time, the entire pleading should appear a running and well-knit matter, must not look like isolated fact placed together. Inter-relations ships of paragraphs must seem to exist. All the relevant facts must be stated in strict chronological order.

l) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

Other Rules

Pleading must be Signed

Order VI Rule 14 makes it obligatory that the pleading shall be signed by the party and his pleader (if any). However, where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

The main purpose of this rule is to prevent any possible denial by any party that he did not authorize the proceedings. Thus, even if pleader produces the vakalat-nama duty authorizing him to fight or defend the suit, the signature of the pleader alone would not do. The pleading must bear the signature or thumb impression or any other identification mark of the party concerned. The only exception is that the party is unable to sign by reason of absence or any other good cause. Mere absence would sufficient; “absence” in this context means such as would not enable the party to be present. Where the party is unable to sign the pleading as aforesaid, then a person duly authorized by him will sign the pleading. Such authority to sue or defend must be produced before the court.

Verification of Pleading

Order VI Rule 15, states every pleading shall be verified at the foot by the by any of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. The person verifying shall specify, by reference to the numbered paragraphs of the pleading what he verifies of his own knowledge and what he verified upon on received and believed to be true. The verification shall be signed by the person making it and the date on which and the place at which it was signed. The aim of verification is only to fix responsibility of the statements made in the pleading upon same one before the court proceeds to adjudicate upon them.

A person making a false verification is liable to be punished under the Indian Penal Code, 1860 as making a false statement is by itself an offence. Therefore, the responsibility of verifications is very great and its significance and the consequences thereof must be realized. After the signature to the pleading some space may be left out and then verification should begin.

Striking out pleadings

It is no difference to an application to strike out impertinent matter, it will make the pleading inconsistent and un meaning or insufficient, for the pleading should be amended if necessary. It meant which is pertinent in a pleading not to be ordered to be expunged on the ground of its being scandalous.

Amendment of pleadings

Court and tribunals are constituted to do justice between the parties within the confines of statutory limitations, and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted. Within the limits prescribed by the decisions of the Supreme Court, the discretionary jurisdiction of the tribunals to amend the pleadings is an extensive as that of civil court. The same well settled principle lay down in the matter of amendment to the pleadings in a suit should also regulate the exercise of the power of amendment by a Tribunal. Accordingly, the pleadings should not be too strictly constructed and that regarded should be substance of the matter and not the form.

The general rule governing amendment of pleadings is that a party is not allowed by amendment to set up a new case or a particularly when a suit on the new cause of action is barred by time. But where the amendment does not constitute or amount to the addition of a new cause of action or raise a new and different case already set up, amount mainly to a different or additional approach to the same facts, amendment is to be allowed even after the expiry of the statutory period of limitation. In this context the expression cause of action does not mean every fact which is material to be proved two enable the plaintiff to succeed. Again, the word new cause means new set of ideas. It therefore at the court will not allow an amendment which introduces a new set of ideas acquired by any party by lapse of time.

The court always give leave to amend the pleading of a party. However, negligence or carelessness may have been the first omission and however late the proposed amendment and amendment may be allowed if it can be made without injustice to the other side. The amendment introduces new case, new cause of action, new or alternative relief, correct description, change in the character of suit, to be considered on the basis of the fact and circumstances of each case. The amendment can be allowed at any stage. There is no invariable rule that an amendment which deprives the opposite party of the plea of limitation should always be refused. The court is, however entitled to allow amendment of the plaint even after the period of limitation has expired, holds that the omission was due to a Bonafide mistake on the part of the plaintiff. Rule of amendment of pleadings is essentially a rule of justice, equity and good conscience.

Inconsistent defences

A defence cannot be ruled out merely because it is inconsistent with another defence. It is certainly open to a party to raise inconsistent defences in the alternative, but at the time when evidence is led, he has got to elect as to which of the alternative inconsistent defences he is going to prove.

[5]SUITS FOR TEMPORARY AND PERMANENT INJUNCTIONS

Preventive Relief is granted at the discretion of the court by injunction, Temporary or Perpetual. The Relief of Injunction is an equitable relief and he who seeks equity must do equity. Hence, a party who asks for an injunction must be able to satisfy the court that his dealing of the matter had been fair, honest and free of any fraud or illegality. The Discretion in granting or refusing injunction must be exercised judicially and not arbitrarily.

Following are the kinds of injunctions.

1. Prohibitory Injunction	2. Mandatory Injunction	3. Temporary Injunction	4. Perpetual Injunction

Temporary injunctions are regulated by the Provisions under Order XXXIX of Code of Civil Procedure, 1908. A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit.

A suit may be filled for obtaining permanent injunction. However, temporary injunction can be in the nature of interim relief.

Civil Pleadings

The Code of Civil Procedure is an adjective law as opposed to substantive law and is not primarily intended to create new right or to take away existing rights.

1. **Classes of Civil Courts** – Besides the Supreme Court and High Courts, there are Civil Courts at District level. Highest among them is Court of District Judge, followed by Additional District Judges. The lower Civil Courts are divided in two forms e.g., one by territorial limits and secondarily pecuniary limit. The

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[5] *Reproduced and sourced from the website of e-courts from the Paper Presentation on the topic of the Principles of mandatory injunction By, Smt. Sk. Shireen, Principal Junior Civil Judge Cum Judicial Magistrate of First class, Sompeta and can be accessed at https://districts.ecourts.gov.in/sites/default/files/pdm%20sompetadt07122019.pdf*

territorial limit is by jurisdiction of the court and by pecuniary limit it is divided into Civil Judge (Senior Division), Civil Judge (Junior Division) and Small Cause Court. When a suit is filed, if it is of civil in nature, it is filed by a complaint which is submitted to computerized filing centre of a District.

2. **In money suits**: Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed: But where the plaintiff sue for *mesne* profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for.

2A. Where interest is sought in the suit –

(1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out.

(2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.

(3) Pleadings shall also state—

  (a) the rate at which interest is claimed;

  (b) the date from which it is claimed;

  (c) the date to which it is calculated;

  (d) the total amount of interest claimed to the date of calculation; and

  (e) the daily rate at which interest accrues after that date.

3. **Where the subject-matter of the suit is immovable property**: Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

4. **When plaintiff sues as representative**: Where the plaintiff sues in a representative character the plaint shall show not only that he has an actual existing interest in the subject- matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

Dilatory Pleas

Pleas which merely delay the trial of a suit on merits have been characterized as 'dilatory pleas'. They simply raise formal objections to the proceedings and do not give any substantial reply to the merits of the case, e.g., the plea that the court-fee paid by the plaintiff is not sufficient. Such pleas should be raised at the earliest opportunity.

Interlocutory Application

"Interlocutory" means not that decides the cause but which only settles some intervening matter relating to the cause. After the suit is instituted by the plaintiff and before it is finally disposed off, the court may make interlocutory orders as may appear to the court to be just and convenient. The power to grant Interlocutory orders can be traced to Section 94 of C.P.C. Section 94 summarizes general powers of a civil court in regard to different types of Interlocutory orders. It provides for supplemental proceedings. The detailed procedure has been set out in the Schedule I of the C.P.C which deals with Orders and Rules.

Interlocutory orders may take various shapes depending upon the requirement of the respective parties during the pendency of the suit e.g., Applications for appointment of Commissioner, Temporary Injunctions, appointment of Receivers, payment into court, security for cause etc. The Supreme Court in *Rashtriya Ispat Nigam Ltd. V. Verma Transport Company, AIR 2006 SC 2800*, placing reliance upon its earlier judgment in *Vareed Jacob v. Sosamma Geevarghese, AIR 2004 SC 3992* explained the distinction between incidental and supplemental proceedings explaining that incidental proceedings are those which arise out of the main proceedings.

Plaint Structure

PLAINT: Particulars to be contained in plaint provided under order VII, Rule 1.

According to this rule the plaint shall contain the following particulars:

(a) The name of the Court in which the suit is brought;

(b) The name, description and place of residence of the plaintiff;

(c) The name, description and place of residence of the defendant, so far as they can be ascertained;

(d) Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

(e) The facts constituting the cause of action and when it arose;

(f) The facts showing that the Court has jurisdiction;

(g) The relief which the plaintiff claims;

(h) Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

(i) A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

1. Heading and Title: Name of the Court in which the suit is filed indicated at the top of the first page. Heading of the plaint means the court in which the suit is instituted. Therefore, the name of the court has to come on the top of the plaint (Order VII, Rule 1(a)). If a court has various jurisdictions the specific jurisdiction in which the suit is being instituted should be given below the name of the court.

Examples of Plaints

IN THE COURT OF CIVIL JUDGE (Senior Division)_____

OR

IN THE JUDICATURE OF HIGH COURT_____________

Original Jurisdiction

Before the heading of the plaint proper space should be left for affixing court-fee stamp. Just below the name of the court, a space should left for the number of the suit. It is as such

Suit No. _____________ of_______________(Year)

Thereafter the names of the parties to the suit with all necessary particulars should be given. For ex.: AB s/o CD aged ______ yrs, Resident of____

Plaintiff

Versus

PQ s/o RS aged_____________Yrs, Resident of_______________________________________

Defendant

If there are more plaintiff or defendant than the names of all plaintiffs/and defendant should be given in plaint as plaintiff No. 1/defendant No.1 and so on.

After the names of the parties the title of the suit should be given for example.

"Suit for specific performance and damages"

or

"Suit for Recovery of money"

or

"Suit for damages for malicious prosecution"

or

"Petition for Restitution of Conjugal Rights u/s 9 of the Hindu Marriage Act, 1955"

Where the plaintiff or defendant is a minor or a person of unsound mind, the fact should be mentioned in the cause-title. At the same time the name and description to the person through whom such person sues or sued should also be given in the cause-title. The forms given at No. 2 in Appendix A to the First Schedule of C.P.C. would be of special assistance in framing cause-titles in particular cases. For example, if plaintiff or defendant is:

- **(i)** **Individual person** - AB S/o ______________ Aged ______________ Res. of ______________
- **(ii)** **Proprietary concern** - AB S/o ______________ Aged ______________ Res. of ______________ proprietor of MIs XYZ and carrying on business at ....
- **(iii)** **Partnership firm** – M/s XYZ, a partnership firm registered under the Indian partnership Act, 1932 with its principal place of business at ______________
- **(iv)** **A company** - M/s XYZ, Pvt. Ltd. A company incorporated under the companies Act having its registered office at ______________
- **(v)** **Company in Liquidation** - M/s XYZ Ltd. In liquidation through liquidator Mr. ABC having office at ______________
- **(vi)** **Statutory Corporation** - The Life Insurance Corporation of India established and constituted under the Life Insurance Act, having its registered office at ______________
- **(vii)** **Municipality** – Municipal Corporation of Delhi through its Chairman, Town Hall, Delhi.
- **(viii)** **Minor** - AB S/o ______________ Aged ____ a minor through his father and natural guardian S/o ______________ Aged ______________ Res. of ______________

2. Body of the Plaint: Then follows the body of the suit/plaint. The plaintiff acquaints the court and defendant with the case. The statement of facts is divided into paragraphs numbered consecutively. As far as convenient a paragraph should contain only one allegation. Dates, time and numbers should be expressed in figures as well as in words. The body of plaint usually begins thus:

'The above named plaintiff states as follows:

1. That ________________________

   Mogha in 'The Law of Pleading in India has divided the body of the plaint into two parts (1) Substantive portion and (2) Formal portion.

   I. **Substantive portion** of the body of plaint is devoted to (i) statement of all facts constituting the cause of action and (ii) the facts showing the defendant's interest and liability. But, as already noted, often it is desirable to start the plaint with certain introductory statements, called 'matters of inducement'.

II. **Formal portion** of the plaint shall state the following essential particulars:

(i) Date when the cause of action arose;

(ii) Statement of facts pertaining to jurisdiction;

(iii) Statement as to valuation of the suit for the purpose of jurisdiction and court fees and it should be stated that the necessary court fee has been affixed to the plaint;

(iv) Statement as to minority or insanity of a party or if he is representing some other body then statement as to plaintiff's representative character;

(v) When a suit is filed after the expiry the period of limitation a statement showing the ground or grounds on which he has claimed exemption or condonation of delay in Limitation Law;

(vi) Every relief sought for by the plaintiff should be accurately worded. Rule 7 says that every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement. The plaintiff can claim more than one relief, in the suit. He can seek reliefs alternatively. A plaintiff is entitled to claim more than one relief in respect of the same cause of action should sue for all of them because he is debarred from bringing a fresh suit in respect to the omitted relieves except when the omission in the first suit was with the permission of the court [Order 2, Rule 2 (3) of C.P.C.];

(vii) Signature and Verification: The plaint must be signed by the plaintiff through advocate. But if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it must be signed by any person duly authorized by him to sign the same. The verification is done by the plaintiff himself.

Verification

I ______________ (Name), S/o Shri _________________________ (Father's name), the aforesaid plaintiff do hereby verify that the contents of paragraphs nos. _____ to ________ of the above plaint are true and correct within my personal knowledge and that the contents of paras ________ to_________ (mention the paras by their number in the pleading) I believed to be true on the basis of information received.

Signed and verified this at ________ (Place) on this _______ (Date) day of _____________ month ___________ years.

Sd/- (Plaintiff)

Note: Affidavit should also be enclosed with plaint as provided under Order VI Rule 15 (4) CPC, 1908. All documents on which the plaintiff relies for his claim should be enclosed with a separate List of Documents according to Order VII Rule 14 (1) CPC, 1908.

Format of Plaint

Suit for Ejectment and Arrears of Rent in the Court of Small Cause________

Suit No. ______ Of ___________

(Space for Court-fee Stamp)

AB S/o CD Age______ Resident of _______________________________________ *Plaintiff*

Versus

PQ S/o RS Age_______Resident of ____ *Defendant*

Suit for Ejectment, Arrears of Rent and Mesne Profits

The above-named plaintiff states as follows: -

1. That the plaintiff is the owner of the house no. _____ Situated at ______ and bounded as below: -

   Boundaries of the Houses

* * * * * * * * *

2. That under verbal agreement made on ______________ the defendant became a monthly tenant to the plaintiff in respect to the house described in paragraph I above at the rent of Rupees _______________ Per month and has been in occupation of the said house as such tenant since the above-mentioned date of the agreement.
3. That the defendant has not paid the rent from _______________(date) or any part thereof.
4. That the plaintiff duly determined the said tenancy by serving on the defendant, by registered post on _____________________ a notice to quit the said house within thirty days of the receipt of the notice and pay the entire arrears of rent from ________________. That the said notice was served upon the defendant on October _________________ (date) yet the defendant has not vacated the house, nor has he paid the said arrears of rent or any part thereof. Hence the defendant is liable to Ejectment under section 20 of the U.P. Act No. XIII of 1971.
5. That now a total sum of Rupees ______________ is due to the plaintiff as against the defendant, that is Rupees ________________ on account of arrears of rent from ________________ to _______________, and Rupees ____________ on account of damages for use and occupation from _________________________ to _____________________, the date of filing the suit.
6. That the cause of action for the said arose on _________________ when the period stipulated in the said notice expired.
7. That the defendant resides at ____ within the jurisdiction of the court.
8. That the valuation of the suit for purpose of jurisdiction and payment of court-fee is Rupees_________, has been paid.

Wherefore the plaintiff claims –

a) That the decree for Ejectment of the defendant from the house described in paragraph 1 above be passed in favour of the plaintiff.

b) That the decree of Rupees on account of arrears of rent from _____________________ to _____________________ be passed in favour of the plaintiff.

c) That a decree for Rupees _____________ on account of damages for use and occupation at the rate of Rupees ___________ per month from _____________, to _________________, the date of suit, be passed in favour of the plaintiff as against the defendant.

d) That a decree for further damages for use and occupation at the aforesaid rate till the Ejectment of the defendant be passed in favour of the plaintiff as against the defendant on payment of additional court-fee.

e) That cost of the suit be allowed to the plaintiff.

Place: ______________ *AB*

Date: ______________ *Plaintiff*

Through Advocate

Verification

I, AB, the aforesaid, plaintiff, do hereby verify the contents of paragraphs ______ and_______ of the above plaint are true to my personal knowledge and the contents of the paragraphs _________ and_________, I believe to be true on information received.

Signed and verified this ________ day of _______________ 20__________ at _______________________.

AB

Plaintiff

WRITTEN STATEMENT

A written statement is required to be filed by the defendant in answer to the claim made by the plaintiff in his plaint which is delivered to the defendant along with the summons to attend at the first hearing of the suit. Written statement is the statement or defence of the defendant by which he either admits the claim of the plaintiff or denies the allegations or averments made by the plaintiff in his plaint. The written statement must specifically deal with each allegation of fact in the plaint and when a defendant denies any fact, he must not do so evasively but answer the same in substance. Before proceeding to draft a written statement, it is always necessary for a pleader to examine the plaint very carefully and to see whether all the particulars are given in it and whether the whole information that he requires for fully understanding the claim and drawing up the defence is available. If any particulars are wanting, he should apply that the plaintiff be required to furnish them before the defendant files his written statement. If he cannot make a proper defence without going through such particulars and/ or such documents referred to in the plaint, and that the defendant is not in possession of such copies, or the copies do not serve the required purpose, the defendant should call upon the plaintiff to grant him inspection of them and to permit him to take copies, if necessary, or, if he thinks necessary, he may apply for discovery of documents. If he thinks any allegation/ allegations in the plaint are embarrassing or scandalous, he should apply to have it struck out, so that he may not be required to plead those allegations. If there are several defendants, they may file a joint defence, if they have the same defence to the claim. If their defences are different, they should file separate written statements, and if the defences are not only different but also conflicting, it is not proper for the same pleader to file the different written statements. For instance, if two defendants, executants of a bond, are sued on the bond, and their plea is one of satisfaction, they can file a joint written statement. If the plaintiff claims limitation from the date of certain acknowledgement made by one defendant and contends that the acknowledgement saves limitation against the other also, the defendants may file separate written statements. In a suit on a mortgage deed executed by a Hindu father, to which the sons are also made parties on the ground that the mortgage was for a legal necessity, if the sons want to deny the alleged legal necessity, they should not only file a separate defence from their father's but should also preferably engage a separate pleader.

(1) ***Formal Portion of Written Statement:*** A written statement should have the same heading and title as the plaint, except that, if there are several plaintiffs or several defendants, the name of only one may be written with the addition of "and another" or "and others", as the case may be. The number of the suit should also be mentioned after the name of the court. After the name of the parties and before the actual statement, there should be added some words to indicate whose statement it is, e.g., "written statement on behalf of all the defendants" or "written statement on behalf of defendant No. 1", or "written statement on behalf of the plaintiff in reply to defendant's claim for a set off" or "written statement (or replication) on behalf of the plaintiff filed under the order of the court, dated... " or "written statement on behalf of the plaintiff, filed with the leave of the court". The words "The defendant states_____________" or "The defendant states as follows" may be used before the commencement of the various paragraph of the written statement but this is optional.

No relief should be claimed in the written statement, and even statements such as that the claim is liable to be dismissed should be avoided. But when a set off is pleaded or the defendant prefers a counter-claim for any excess amount due to him, a prayer for judgment for that amount in defendant's favour should be made.

(2) ***Body of the Written Statement:*** The rest of the written statement should be confined to the defence.

Forms of Defence: A defence may take the form of (i) a "traverse", as where a defendant totally and categorically denies the plaint allegation, or that of (ii) "a confession and avoidance" or "special defence", where he admits the allegations but seeks to destroy their effect by alleging affirmatively certain facts of his own, as where he admits the bond in suit but pleads that it has been paid up, or that the claim is barred by limitation, or that of (iii) "an objection in point of law" (which was formerly called in England "a demurrer"), e.g., that the plaint allegations do not disclose a cause of action, or that the special damages claimed are too remote. Another plea may sometimes be taken which merely delays the trial of a suit on merits, e.g., a plea that the hearing should be stayed under Section 10, C.P.C., or that the suit has not been properly framed, there being some defect in the joinder of parties or cause of action and the case cannot be decided until those defects are removed. These pleas are called (a) "dilatory pleas" in contradistinction to the other pleas which go to the root of the case and which are therefore known as (b) "peremptory pleas" or "pleas in bar". Some dilatory pleas are not permitted in pleadings, but must be taken by separate proceedings. Others may either be taken in the written statement under the heading "Preliminary Objections", or by a separate application filed at the earliest opportunity, as some pleas, such as that of a mis-joinder and non-joinder, cannot be permitted unless taken at the earliest opportunity (O. 1, R. 7 and 13).

A defendant may adopt one or more of the above forms of defence, and in fact he can take any number of different defences to the same action. For example, in a suit on a bond he can deny its execution, he can plead that the claim is barred by limitation, he can plead that, as no consideration of the bond is mentioned in the plaint, the plaint does not disclose any cause of action, he can plead that the bond being stated to be in favour of two persons the plaintiff alone cannot maintain the suit. He can as well plead one form of defence to one part of the claim, and another defence to another part of it. He can take such different defences either jointly or alternatively, even if such defences are inconsistent. But certain inconsistent pleas such as those which depend for their proof, on entirely contradictory facts, are generally not tenable. A ground of defence, which has arisen to the defendant even after the institution of the suit, but before the filing of his written statement, may also be raised (O.8, R.8).

All defences which are permissible should be taken in the first instance, for, if the defendant does not take any plea, he may not be allowed to advance it at a later stage, particularly when it involves a question of fact.

How to Draft a Written Statement

When the defendant relies on several distinct grounds of defence or set off, founded upon separate and distinct facts, they should be stated in separate paragraphs (O.8, R.7), and when a ground is applicable, not to the whole claim but only to a part of it, its statement should be prefaced by words showing distinctly that it is pleaded only to that part of the claim, thus: "As to the *mesne* profits claimed by the plaintiff, the defendant contends that, etc." or "As to the price of cloth said to have been purchased by the defendant, the defendant contends that, etc."

When it is intended to take several defences in the same written statement, the different kinds of defences should be separately written. It is convenient to adopt the following order for the several pleas:

(i) **Denials**: A defendant is said to take the defence of denial when he totally and categorically, denies the allegations contained in the plaint. It is also called 'traverse'. Admissions and denials of the material facts alleged in the plaint should be given in the opening paragraphs of the body of the written statement. It may be emphasized that bare denials are in themselves valid defences to the claim made in the plaint.

Rules as to denials: a. Denials must be specific, b. Denials must not be evasive.

(ii) **Dilatory pleas**: Pleas which merely delay the trial of a suit on merits have been characterized as 'dilatory pleas'. They simply raise formal objections to the proceedings and do not give any substantial reply to the merits of the case, e.g., the plea that the court-fee paid by the plaintiff is not sufficient. Such pleas should be raised at the earliest opportunity.

(iii) **Objections to point of law**: By such an objection, the defendant means to say that even if the allegations of fact (made in the plaint) be supposed to be correct, still the legal inference which the plaintiff claims to draw in his favour from those facts is not permissible.

(iv) **Special defence** (confession and avoidance): Special defence is more appropriately called the plea of confession and avoidance. It is a plea whereby the defendant admits the allegations made in the plaint but seeks to destroy their effect by alleging affirmatively certain facts of his own, showing some justification or excuse of the matter charged against him or some discharge or release from it.

(v) **Set off and counter-claim**: According to Black's Law Dictionary set off is the defendant's counter demand against the plaintiff, arising out of a transaction independent of the plaintiff's claim. Where the plaintiff sues a defendant for the recovery of money the defendant can defend that suit and he can 'claim a set-off in respect of any claim of his own'. An analysis of sub-rule (1) of Rule 6 of Order VIII would reveal that a claim by way of a set-off is allowed in the following conditions:

a. the sum claimed must be ascertained sum of money,

b. it must be legally recoverable,

c. it must be recoverable by the defendant,

d. it must be recoverable from the plaintiff,

e. the sum claimed by the defendant must not exceed the pecuniary limits of the jurisdiction of the Court, both parties must fill the same character as they fill in the plaintiff's suit.

Set-off may be of two kinds: legal set-off and equitable set-off. Etymologically the counter claim is the claim made by the defendant against the averments made by the plaintiff in his plaint. Black's Law Dictionary defines it as a claim for relief asserted against an opposing party after an original claim has been made, especially a defendant's claim in opposition to or as a set-off against the plaintiff's claim. Counter claim must be treated as a plaint. It shall have the same effect as a cross suit so as to enable the Court to pronounce judgement in the same suit, both on the original claim and on the counter claim.

All admissions and denials of facts alleged in the plaint should be recorded in the first part of the written statement and before any other pleas are written. If a defendant wishes to add an affirmative statement of his own version to the denial of a plaint allegation, or to add anything in order to explain his admission or denial, it is better and more convenient to allege the additional facts along with the admissions or denial, than to reserve them until after the admissions or denials have been recorded. If there are some defences which are applicable to the whole case and others which apply only to a part of the claim, the former should preferably be pleaded before the latter.

Drafting of Reply/Written Statement – Important Considerations

At the time of drafting the reply or written statement, one has to keep the following points in mind:-

(i) One has to deny the averment of the plaint/petition which are incorrect, perverse or false. In case, averment contained in any para of the plaint are not denied specifically, it is presumed to have been admitted by the other party by virtue of the provisions of Order VIII, Rule 5 of the Code of Civil Procedure.

It must be borne in mind that the denial has to be specific and not evasive (Order VIII, Rule 3 & 4 CPC)

However, general allegation in the plaint cannot be said to be admitted because of general denial in written statement. [*Union* v. *A. Pandurang,* AIR 1962 SC 630.]

(ii) If the plaint has raised a point/issue which is otherwise not admitted by the opposite party in the correspondence exchanged, it is generally advisable to deny such point/issue and let the onus to prove that point be upon the complainant. In reply, one has to submit the facts which are in the nature of defence and to be presented in a concise manner. [*Syed Dastagir* v. *T.R. Gopalakrishnan Setty* 1999 (6) SCC 337.]

(iii) Attach relevant correspondence, invoice, challan, documents, extracts of books of accounts or relevant papers as annexures while reply is drafted to a particular para of the plaint;

(iv) The reply to each of the paras of the plaint be drafted and given in such a manner that no para of the plaint is left unattended. The pleadings are foundations of a case. [*Vinod Kumar* v. *Surjit Kumar,* AIR 1987 SC 2179.]

(v) After reply, the same is to be signed by the constituted attorney of the opposite party. If the opposite party is an individual, it could be signed by him or his constituted attorney or if the opposite party is a partnership firm, the same should be signed by a partner who is duly authorised under the Partnership Deed, because no partner has an implied authority to sign pleadings on behalf of the partnership firm by virtue of Section 22 of the Indian Partnership Act, 1932. In case of a body corporate, the same could be signed by any Director, Company Secretary, Vice-President, General Manger or Manager who is duly authorised by the Board of Directors of the company because any of the aforesaid persons *per se* are not entitled to sign pleadings on behalf of the body corporate. [Order XXIX of Code of Civil Procedure.]

It may be noted that if the plaint or reply is not filed by a duly authorised person, the petition would be liable to be dismissed [*Nibro Ltd* . v. *National Insurance Co. Ltd.,* AIR 1991 Delhi 25; *Raghuvir Paper Mills Ltd.* v. *India Securities Ltd.* 2000 Corporate Law Cases 1436]. However, at the time of filing of petition, if the pleadings are signed by a person not authorised, the same could be ratified subsequently. [*United Bank of India* v. *Naresh Kumar,* AIR 1997 SC 2.]

(vi) The reply/written statement is to be supported by an Affidavit of the opposite party. Likewise, the Affidavit will be sworn by any of the persons aforesaid and duly notarized notarized by an Oath Commissioner. The Affidavit has to be properly drawn and if the affidavit is not properly drawn or attested, the same cannot be read and the petition could be dismissed summarily. [Order VI, Rule 15 CPC]. The court is bound to see in every case that the pleadings are verified in the manner prescribed and that verifications are not mere formalities.

(vii) The reply along with all annexures should be duly page numbered and be filed along with authority letter if not previously filed.

(viii) At the time of filing of reply, attach all the supporting papers, documents, documentary evidence, copies of annual accounts or its relevant extracts, invoices, extracts of registers, documents and other relevant papers.

(ix) It may be noted that if any of the important points is omitted from being given in the reply, it would be suicidal as there is a limited provision for amendment of pleadings as provided in Order VI, Rule 17 CPC, and also the same cannot be raised in the Affidavit-in-Evidence at the time of leading of evidence. Because if any point has not been pleaded in the pleadings, no evidence could be led on that point. General rule is that no pleadings, no evidence. [*Mrs. Om Prabha Jain* v. *Abnash Chand Jain,* AIR 1968 SC 1083; 1968 (3) SCR 111.]

(x) If a party is alleging fraud, undue influence or misrepresentation, general allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however, strong the language in which they are couched may be, and the same applies to undue influence or coercion. [*Afsar Shaikh* v. *Soleman Bibi,* AIR 1976, SC 163; 1976 (2) SCC 142]. While pleading against fraud or misrepresentation, party must state the requisite particulars in the pleadings. [*K Kanakarathnam* v. *P Perumal,* AIR 1994 Madras 247.]

(xi) It is well settled that neither party need in any pleadings allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied. [Order VI, Rule 13 CPC; Sections 79 and 90 of Indian Evidence Act.]

(xii) In every pleading, one must state specifically the relief which the party is claiming from the court or tribunal or forum. While framing the prayer clause, one should claim all possible relief as would be permissible under the pleadings and the law [Order VII, Rule 7 CPC]. The general principle is that the relief if not prayed for, will not be allowed. [*R Tiwary* v. *B Prasad,* AIR 2002 SC 136.]

Format of Written Statement

Suit for Ejectment and Arrears of Rent

In the Court of Small Cause ____________

Suit No___________ of ___________

(Space for Court-fee Stamp)

AB S/o CD Age_______ Resident of _________________________________ *Plaintiff*

Versus

PQ S/o RS Age_______ Resident of __________________________________ *Defendant*

Written Statement on behalf of the defendant to the suit for Ejectment, Arrears of Rent and *Mesne* Profits

The above-named defendant states as follows: -

1. That the defendant admits the facts stated in paragraph 1 of the plaint.
2. That the defendant admits the agreement mentioned in paragraph 2 of the plaint and his occupation of the said house as alleged therein.
3. That the defendant denies that he has not paid the rent from _________________, as stated in paragraph 3 of the plaint.
4. That the defendant admits service of the notice alleged in paragraph 4 of the plaint, but does not admit that the plaintiff duly determined the defendant's tenancy thereby. That the defendant admits that he continues to be in occupation of the said house but denies that he has not paid any part of the said arrears of rent or that he is liable to Ejectment under the provisions of law alleged in paragraph 4 of the plaint.
5. That the defendant does not admit anyone of the several allegations made in paragraph 6 of the plaint.
6. That no cause of action even occurred to the plaintiff alleged in paragraph 6 of the plaint.
7. That the defendant admits the jurisdiction of the court as alleged in paragraph 7 of the plaint. However, it is submitted that the jurisdiction of this Hon'ble Court has been wrongly invoked by the plaintiff.
8. That paragraph 8 of the plaint relates to valuation of the suit and payment of court fee which is matter of record.

Additional Pleas

9. That the defendant has paid the rent for the months May, June, July, August and September, 20______, to Shri EF, the plaintiff's authorized agent who has been collecting the rent of the said house on behalf of the plaintiff but no rent receipts in respect of the aforesaid months have been issued to the defendant even after repeated demands by the defendant.

10. That the rent for the October, 20______, and that for the subsequent months was tendered to the said agent of the plaintiff and to the plaintiff himself but both have refused to accept it.

11. That in fact only Rupees ___________, are due from the defendant to the plaintiff as arrears of the rent , being the rent for the months mentioned in paragraph 10 above and that the defendant is ready and willing to pay the said amount to the plaintiff herein before this Hon'ble Court.

12. That the notice mentioned in paragraph 4 of the plaintiff is invalid in that it did not purport to give sufficient period of time to the defendant as stipulated in section 30 of the U.P. Act No. XIII of 1972.

13. That there are absolutely no grounds for granting the relief prayed for by the plaintiff and the suit is liable to be dismissed with costs.

Place: _____________ *PQ*

Date: _____________ *Defendant*

Through Advocate

Verification

I, PQ, the aforesaid, defendant, do hereby verify the contents of paragraphs _______ and_____________ of the above plaint are true to my personal knowledge and the contents of the paragraphs _______ and________, I believe to be true on information received.

Signed and verified this ______ day of ____________ 20______, at ______________________

PQ

Defendant

Notice

There is no self-contained general law relating to notices laying down therein what exactly constitutes a notice. What should be at its essential contents, by whom and to whom it should be given and the manner in which it should be served. But in various laws where an appeal or revision or review is provided, invariably there will also be a provision to the effect that the person is likely to be affected should be put on notice before final orders are passed. But beyond that, the provisions do not elaborate in regard to the notice on the various aspects above mentioned. It has therefore become necessary to wade through the labyrinth of case law under various laws requiring notice to the party affected and particularly under section 3 and 106 for the transfer of property act 1882 which give rise to frequent litigation on the subject of notice. Notice is a subject of considerable importance and indeed its scope has become is becoming wider and wider for the simple reason that many cases are fought in court on this solitary issue that there was no notice or the notice given to the affected party was inadequate. The subject of notice falls under two categories. Firstly, the giving of notice by an individual to others before taking action which would affect the other person. Such a notice by an individual may require the other person to do a certain thing failing which legal action would be taken. For example, a notice under section 106 of the transfer of property act 1882 determine the lease and asking the lessee to vacate the premises falls under this category. Similarly, when a private person intends to proceed against the government or a public authority by filing a suit, a notice under section 80 of the CPC is an essential requisite so that the government or public authority may, before the suit is filed redress the grievance of the private person and avoid litigation. A partner withdrawing from partnership giving a notice also falls under this category.

The object of notice under section 80 of CPC is to give the government or the public officer concerned an opportunity to reconsider the legal position and if that course is justified to make amends or settle the claim out of court. The contemplation of the notice under section 80 of CPC is to give to the concerned government and public officers opportunity to reconsider the legal position and to make amends or settle the claim if so advised without litigation. The legislative intention behind that section is that public money and time should not be wasted on unnecessary litigation and Government and public officer should be given a reasonable opportunity to examine the claims made against them lest they should be drawn into avoidable litigation. The purpose of law is advancement of justice.

A lease of the immovable property may be for agriculture purpose or for manufacturing purpose or residential purpose. The period of notice and the manner of its giving are governed by section 106 of the Transfer of Property Act. But this section applies only in the absence of a contract or local law or usage to the contrary. Essential requisites of notice is that it should be in writing and signed by the notice giver or by his authorised agent. Merely typing the name of the person who gives the notice is not sufficient. The notice should be definite and should state in unequivocal terms that the tenancy stands terminated from the specified therein.

NOTICE OF SUIT UNDER SECTION 80, C.P. CODE AGAINST A PUBLIC OFFICER OF A STATE GOVERNMENT

Registered with A/D

Dated:-

The __________20____

To

____
(Name and Official Designation)
P.O.
Date

Notice under section 80 of the code of civil procedure

Dear Sir

Please take notice that my client ____________ son of____________ residing at ________________________ ________________________ intends to bring a suit against the (state here the office the intended defendant holds), a public officer of the government of (state the name of the province or simply of the government of India as the case may be) in a competent court of law on the cause of action stated herein-under and for reliefs appearing below :

Cause of action for the intended suit

(i) ____________________________

(ii) ____________________________ etc.

Reliefs sought for:

(i) ____________________________

(ii) ____________________________

Yours Faithfully

Advocate

Notice of Ejectment under section 106 of the Transfer of Property Act format

NOTICE OF EJECTMENT

THROUGH ADVOCATE

(SECTION 106 OF THE TRANSFER OF PROPERTY ACT, 1882)

Advocate Name ___________

Address ______________ Phone no. ____________

REGD A/D / U.P.C.

Dated __________

To ____________

Sub: NOTICE UNDER SECTION 106 OF THE TRANSFER OF PROPERTY ACT, 1882 FOR EJECTMENT

Dear Sir,

Under the instructions from and on behalf of my client Sh. ____________________ S/O ________________________ R/O ____________________________________ (hereinafter referred to as "my client"), I serve you with the following notice:

1. That the house bearing no. _____ situated at ____in ______city is owned by my client. That you approached my client and requested my client to give the said property on lease to you.
2. That my client has inducted you as the tenant in respect of the said property. That the agreed monthly rent for the said property is Rs ________________ per month.
3. I hereby give you notice that you are to quit and vacate the said property below of which you are now in possession of as a monthly (or yearly) tenant under my said client immediately on the expiry of the last day of ____________ 20XX.
4. On and from the _____ of _____ (month next following the last day of the month on which the tenant is required to quit) the tenancy hereto before subsisting shall terminate and all relationship of landlord and tenant between my client and you shall absolutely cease.
5. You are requested to deliver vacant possession of the said premises unto my client on that date as stated above.
6. In case of your failure to quit the premises as desired, you will be considered as a trespasser and ejected in due course of law and you will have to pay damages at rate of Rs. _____________ per ________until you are evicted.

Yours faithfully

Advocate

PETITIONS

Original Petition

Suits are filed to lodge money claims in civil courts working under District Courts while petitions are filed in High Courts which are above District Courts seeking some directions against the opposite party; mostly the Government.

There is no legal term like original suit or original petition. Suit of a civil nature is ordinarily tried in civil court. Every person has a right to bring a suit of a civil nature and civil court has jurisdiction to try the suits of a civil nature. Due to increasing litigation and delays in civil suits, parliament and state legislative created special courts and Tribunals with special enactments. The reason behind this exercise is for speedy disposal of cases of various types. For ex. Cases of ejectment in respect of urban buildings between the landlord and tenant are now dealt with by special courts created under various state legislations. Railway accidents claims are decided by railway claim Tribunals, claims by Industrial woken for payment of wages are entrusted to prescribed authorities. So is the case with the workman's compensation claims. In some states and in center also service tribunal have been created for adjudication of cases of public servants in disputes arising out of their employment, including dismissal, terminator of service, etc. At many places family courts have been established to deal with matrimonial disputes. In such cases which are dealt with by special courts under special enactments the party aggrieved expected to approach such special courts or tribunal and the jurisdiction of the civil courts under section 9 CPC is barred. However, in practice, the words 'petitions' and 'suits' are generally used to mean formal applications for seeking legal remedy. The suit which is initially filed in the first court for the first time is referred as original suit. Petitions are Writ Petitions, Arbitration Petitions, Miscellaneous Petitions etc. & not the original petition.

After judgment in suit or petition, if any aggrieved party challenges it, then it is by filing appeal in the higher court which is ordinarily called as Appeal but often in some court it is termed as Letters Patent Appeal (LPA) & as Special Leave Petition (SLP) in Supreme Court.

Execution Petition

Application for Execution

Execution of decree

Application for execution of a decree shall be made by a holder of a decree who desires to execute it to the appropriate court which passed it or to the officer appointed in this behalf. In case the decree has been sent to another court than the application shall be made to such court or the proper officer thereof. Execution of an injunction decree is to be made in pursuance of the Order XXI Rule 32 CPC as the CPC provides a particular manner and mode of execution and therefore, no other mode is permissible.

Application for execution of a decree may be either (1) Oral; or (2) written.

(a) ***Oral Application:*** Where a decree is for payment of money the court may on the oral application of the decree holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgement debtor, prior to the preparation of a warrant if he is within precincts of the court.

(b) ***Written Application:*** Every application for the execution of a decree shall be in writing save as otherwise provided sub-rule (1) signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely :

- (a) the No. of the suit;
- (b) the name of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of costs (if any) awarded;

(i) the name of the person against whom execution of the decree sought; and

(j) the mode in which the assistance of the court is required, whether–

  (i) by the delivery of any property specifically decreed;

  (ii) by the attachment or by the attainment and sale, or by the sale without attachment, of any property;

  (iii) by the arrest and detention in prison of any person;

  (iv) by the appointment of a receiver;

  (v) otherwise, as the nature of the relief granted may require.

The court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree. Some High Courts in different States have framed additional rules in this regard may also be taken care by the draftsman or the executing lawyer.

SPECIAL LEAVE PETITION

In suitable cases, where some arguable questions, mostly on legal points are involved, the Constitution confers under Article 136 wide discretionary powers on the Supreme Court to entertain appeals even in cases where an appeal is not otherwise provided for. But so far as questions of fact, as distinct from questions of law, is concerned, it is only in rare or exceptional cases that the Supreme Court interferes and that too when finding of the High Court or the lower Court is such that it shocks the conscience of the court.

Specimen Form of a Petition for Special Leave

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (C) NO. __________ OF 20________

(Arising out of the final judgment and order dated passed by the Hon'ble High Court of _____________ in Writ Petition No. ________of 20________)

Position of Parties

_______________ In High Court _________________ In Supreme Court

ABC __________________ _________________ Petitioner

Versus

Government of ______________________________ _________________ *Respondent*

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUSTICES OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION ON BEHALF OF THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The present Special Leave Petition has been filed under Article 136 of the Constitution of India against the judgment and final order dated ______________ passed by the Division Bench of Hon'ble High Court of _____________ in Writ Petition No. ____________ of _______________________ whereby the petition filed by the petitioner herein was dismissed.

2. **QUESTIONS OF LAW**

   A. Whether the land acquisition of land of the petitioner by the respondent is for a Private Company or for a public purpose.

   B. Whether the acquisition is *malafide* being in colourable exercise of power and fraud on the statute and in sheer abuse of power of eminent domain.

3. **DECLARATION IN TERMS OF RULE 3(2)**

   That no other Petition seeking leave to Appeal has been filed by the Petitioner against the final judgment and order dated ______________ passed by the Ld. Division Bench of High Court of ___________________ in Writ Petition No. ________ of ________________.

4. **DECLARATION IN TERMS OF RULE 5**

   That the Annexures filed with the Present Petition are true copies of the pleadings/ documents forming part of the records before courts below.

5. **GROUNDS**

   That the present special leave to Appeal is being filed on the following, amongst other, grounds without prejudice to each other; i. Because the Division Bench of the Hon'ble High Court failed to appreciate that the procedure for acquiring land for a public purpose cannot be adopted for acquiring land for a private company. The acquisition in the instant case was clearly an acquisition for a private company and the respondent State had undertaken a colourable exercise of power by stating it to be an acquisition for a public purpose.

6. **GROUNDS FOR INTERIM RELIEF**

   That the Petitioner has a good case on merits and that there are fair chances of success in the matter before this Hon'ble Court. The acquisition in the instant case was clearly an acquisition for a private company and the State had undertaken a colourable exercise of power by stating it to be an acquisition for a public purpose. If no stay is granted then that would cause serious prejudice to the petitioner.

7. **MAIN PRAYERS**

   In view of the facts and circumstances as mentioned above, it is most humbly prayed that this Hon'ble Court may graciously be pleased to:

   i. Grant Special Leave to Appeal against the order passed by the Division Bench of the Hon'ble High Court of ______________in Writ Petition No. ______________ of ___________________titled as _______________________

   ii. Pass such other or any further order(s) as may be deemed fit and appropriate by this Hon'ble Court in the facts and circumstances of the present case.

8. **INTERIM PRAYER**

   It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to:

   a) stay the impugned judgment dated _______________ passed by the Division Bench of the

Hon'ble High Court of ______________ in Writ Petition No. __________ of ______________, titled________________.

b) pass such other and further orders as this Hon'ble Court may deem fit and proper in the interests of justice.

FILED BY: ____________________

Advocate for the petitioner

Drawn By: ....

Drawn on: ....

Filed on: ....

New Delhi

AFFIDAVIT

IN THE HON'BLE SUPREME COURT OF INDIA

IN THE MATTER OF:_________________________________

____________________________________ .... Petitioner

Versus

____________________________________ ....Respondent

I, ______________________ s/o__________________ Aged________ yrs R/o ____________________________ the petitioner in the Special Leave Petition titled as above do hereby solemnly affirm and state as under:

1. That I am the petitioner and am fully aware of and conversant with the relevants facts concerning the matter in issue in this petition.
2. That the contents of the accompanying Special Leave Petition are true and correct to the best of my knowledge and belief.
3. That no relevant fact has been concealed or kept back in the S.L.P. ________________________.

I, further solemnly affirm at___________________ (place) this the________ day of _____________. 20_____ that the above averments are true and correct. Nothing has been concealed therefrom.

DEPONENT

REVISION

Revision is not a continuation of the suit, but is altogether a separate proceeding. Hence a fresh *vakalatnama* would be necessary to enable the advocate to file the petition for revision. Section 115 of the Code of Civil Procedure, 1908, deals with revisionary jurisdiction of the High Courts. The Section lays down:

"(1) The High Court may call for the record of any case which has been decided by any Court sub-ordinate to such High Court and in which no appeal lies thereto, and if such sub-ordinate Court appears:

(a) to have exercised a jurisdiction not vested in it by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under the Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where:

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding; or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(2) The High Court shall not, under this Section vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto."

Section 115 of the Code of Civil Procedure, 1908 provides for the remedy of revision. In a case where an appeal does not lie against a final order the aggrieved party can file a revision before the High Court (and no other court). There are certain orders passed by the Civil Courts subordinate to the High Court against which the remedy of appeal is not available, even though such orders finally decide an important question involved in the suit or substantially affect the right or interest of a party to the suit. In such cases the High Court can entertain a revision and quash or modify the order of the court below.

SPECIMEN FORM OF REVISION

In the High Court of______________________

Civil Appellate Jurisdiction

Civil Revision No____________ of 20_________

IN THE MATTER OF:

ABC S/o_____________________R/o____ *Petitioner*

Versus

XYZ S/o_______________________R/o____ *Respondent*

AND

IN THE MATTER OF:

CIVIL REVISION AGAINST THE ORDER DATED ______________PASSED BY THE LEARNED SUB-JUDGE, IST CLASS _____________________ IN THE SUIT ENTITLED ABC -VS.- XYZ (CIVIL SUIT NO_________________OF 2013)

May it please the Hon'ble Chief Justice, High Court of_____________________ and his companion Justices.

The petitioner most respectfully showeth:

A. That the petitioner named above has filed a suit against the respondents for the recovery of possession of a house situated in______________________, fully described in the plaint. The suit is pending in the court of Sub- Judge Ist Class_______________________ and the next date of hearing is____________________________.

B. That on being summoned the respondent appeared before the court below and filed his written statement wherein he denied the petitioner's title set up in the suit property.

C. That the trial court framed issues on ____________________ and directed the petitioner (plaintiff) to produce evidence, upon which the petitioner promptly furnished to the court below a list of witnesses and also deposited their diet expenses etc., making a request that the witness be summoned by that Court.

D. That on a previous date of hearing that is ________, 20______, two witnesses of the petitioner had appeared, and their statements were recorded. However, the learned Presiding Officer of the court below passed an order that the remaining witnesses be produced by the petitioner-plaintiff on his own without seeking the assistance of the court. This order was passed despite a request by the petitioner that at least those witnesses named in the list who are State employees should be summoned by the court, as they are required to produce and prove some official records.

E. That on the next date of hearing the learned trial court by the order impugned in this revision closed the evidence of the petitioner-plaintiff on the ground that the remaining witnesses were not produced by him.

F. That the impugned order has caused great prejudice to the petitioner and if the same is allowed to stand the petitioner's suit is bound to fail.

G. That the trial court has unjustifiably denied assistance of the court to the petitioner-plaintiff to secure the attendance of his witnesses. The interests of justice demand that he is provided with all legal assistance in this regard.

In the facts and circumstances discussed above the petitioner prays that this Hon'ble Court be pleased to quash and set aside the order under revision and direct the court below to provide assistance of the court for summoning the plaintiff-witnesses.

PETITIONER

[*Affidavit to be filed in support of the fact that the contents of the accompanying revision petition are true and correct to the best of the deponent's knowledge and that nothing has been kept back or concealed*].

Criminal Miscellaneous Petition

The Criminal Miscellaneous Petitions are one of the important tasks of the Judge in the Criminal Court. The filing of Criminal Miscellaneous Petition will start even before registering the case by way of anticipatory bail application. According to Oxford Dictionary meaning, "Miscellaneous" means consisting of mixture of various things that are not usually connected with each other. When a petition is filed seeking interim relief, it is registered as miscellaneous petition. A Memo filed before the Court of Law need not be treated as Petition. The main difference between Petition and Memo is that Memo is nothing but bringing a fact to notice before a Court of Law and no relief can be sought for in a Memo and notice to the opposite party is not required. However, where a Petition is filed requiring some relief from the court, a notice to opposite party is mandatory in most of the cases. No order be passed on Memo (Held in a decision held in between *Syed Yousuf Ali Vs. Mohd. Yousuf and Others reported in 2016 (3) ALD 235*)

In nutshell it can be called a Petition other than a main case. When a Miscellaneous Petition is filed in Criminal cases, it is registered as Criminal Miscellaneous Petition. As soon as a Petition is filed, primary duty of the Court is to see whether the relief sought is provided under Criminal Procedure Code or not. If it is provided, the Petition shall be called in Public Court by assigning a particular miscellaneous number and notices shall be ordered to the opposite party. Having heard both the parties, a speaking order has to be pronounced. In day to day, Criminal Courts come across several Miscellaneous Petitions seeking different reliefs.

The petitions under section 268, section 250, section 348, section 358 and also under section 93, section 94 and section 144(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023.

Memorandum of Appeal

Although “Appeal” has not been defined in the Code of Civil Procedure, 1908 yet any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court is an “appeal”. A right of appeal is not a natural or inherent right but is a creature of a statute. It is the statute alone to which the Court must look to determine whether a right of appeal exists in a particular instance or not. Parties cannot create a right of appeal by agreement or mutual consent. The right of appeal is not a matter of procedure, but is a substantive right and can be taken away only by a subsequent enactment, if it says so expressly or by necessary intendment and not otherwise. It is for the appellant to show that the statute gives a right of appeal to him. Appeal from original degree is known as first appeal. Second appeal means the appeal from the decree or judgement from the appellate Court. Second appeal only lies to the High Court. First appeal lies to any appellate Court. First appeal lies on the ground of question of law as well as question of facts. Second appeal can only lie on the ground of substantial question of law. Memorandum of appeal contains the grounds on which the judicial examination is invited. A memorandum of appeal is meant to be a succinct statement of the grounds upon which the appellant proposes to support the appeal. It is a notice to the Court that such specific grounds are proposed to be urged on behalf of the appellant, as also a notice to the respondent that he should be ready to meet those specific grounds. The theory of an appeal is that the suit is continued in the Court of appeal and re-heard there. An appeal is essentially a continuation of the original proceedings.

Appeal	***Revision***
An appeal is a complaint to a superior court of an injustice done or error committed by an inferior court with a view to its correction or reversal.	In a case where an appeal does not lie against a final order, the aggrieved party can file a revision before the High Court (an no other court).

In *Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad & Ors., (1999) 4 SCC 468*, the apex Court held that the right of appeal though statutory, can be conditional/qualified and such a law cannot be held to be violative of Article 14 of the Constitution. An appeal cannot be filed unless so provided for under the statute and when a law authorizes filing of an appeal, it can impose conditions as well.

Thus, it is evident from the above that the right to appeal is a creation of Statute and it cannot be created by acquiescence of the parties or by the order of the Court. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature and conferring a Court or Authority with jurisdiction, is a legislative function. Thus, being a substantive statutory right, it has to be regulated in accordance with the law in force, ensuring full compliance of the conditions mentioned in the provision that creates it.

The Code of Civil Procedure, 1908 provides for four kinds of appeals:

(1) Appeals from original decrees (Sections 96 to 99 and Order XLI);

(2) Second Appeals (Sections 100 to 103, Order XLII);

(3) Appeals from Orders (Sections 104 to 106, Order XLIII, Rules 1 and 2); and

(4) Appeals to the Supreme Court (Sections 109 & 112, Order XLV).

  (1) Appeals from original decrees may be preferred from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court on points of law as well as on facts.

  (2) Second Appeals lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

Under Section 100 to the Civil Procedure Code, an appeal may lie from an appellate decree passed *ex parte*. The memorandum of appeal shall precisely state the substantial question of law involved in the appeal. The High Court, if satisfied, that a substantial question of law is involved, shall formulate that question. The appeal shall be heard on question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question. An application which was dismissed on the application of the appellant himself that he wished to withdraw, it cannot be restored even if he was acting under a misapprehension or a mistake of law (*Ram Lal Sahu v Dina Nath AIR 1942 Oudh 50*).

In the second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal:

(a) which has not been determined by the Lower Appellate Court or both by the Court of first instance and the Lower Appellate Court, or

(b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred in Section 100 of the Code (Section 103).

(3) Appeals from, Orders under Sections 104 to 106 would lie only from the following Orders on grounds of defect or irregularity of law:

(a) An Order under Section 35A of the Code allowing special costs;

(b) An Order under Section 91 or Section 92 refusing leave to institute a suit;

(c) An Order under Section 95 for compensation for obtaining arrest, attachment or injunction on insufficient ground;

(d) An Order under the Code imposing a fine or directing the detention or arrest of any person except in execution of a decree; and

(e) Appealable Orders as set out under Order XLIII, Rule 1.

(4) Appeals to the Supreme Court, the highest Court of Appeal, lie in the following cases :

(1) Section 109 of the Code of Civil Procedure, 1908 provides:

"Subject to the provisions in Chapter IV of Part V of the Constitution and such rules as may, from time to time, be made by the Supreme Court regarding appeals from the Courts of India, and to the provisions hereinafter contained, an appeal shall lie to the Supreme Court from any judgement, decree or final order in a civil proceeding of a High Court, if the High Court certifies:

(i) that the case involves a substantial question of law of general importance; and

(ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court."

Order XLV of the Code of Civil Procedure, 1908 provides rules of procedure in appeals to the Supreme Court.

(2) Articles 132 to 135 of the Constitution deal with ordinary appeals to the Supreme Court:

(i) Appeals in Constitutional cases: Clause (1) of the Article 132 of the Constitution provides that an appeal shall lie to the Supreme Court from any judgement, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceedings, if the High Court certifies under Article 134A that the case involves a substantial question of law as to interpretation of the Constitution.

(ii) ***Appeals in civil cases:*** Article 133 deals with appeals to the Supreme Court from decisions of High Court in civil proceedings. For an appeal to the Supreme Court the conditions laid down in this article must be fulfilled.

These conditions are:

(a) the decision appealed against must be a "judgement, decree or final order" of a High Court in the territory of India,

(b) such judgement, decree or final order should be given in a civil proceeding, and

(c) a certificate of the High Court to the effect that (i) the case involves a substantial question of law, and (ii) in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(iii) ***Appeals in criminal cases:*** A limited criminal appellate jurisdiction is conferred upon the Supreme Court by Article 134. It is limited in the sense that the Supreme Court has been constituted a Court of criminal appeal in exceptional cases where the demand of justice requires interference by the highest Court of the land.

There are two modes by which a criminal appeal from any "judgement, final order or sentence" in a criminal proceeding of a High Court can be brought before the Supreme Court:

(1) Without a certificate of the High Court.

(2) With a certificate of the High Court.

(3) Appeal by Special Leave.

In appeals, as a general rule, the parties to an appeal are not entitled to produce additional evidence, whether oral or documentary, but the Appellate Court has discretion to allow additional evidence in the following circumstances:

(i) When the lower Court has refused to admit evidence which ought to have been admitted;

(ii) When the party seeking to produce additional evidence establishes that he could not produce it in its trial Court for no fault of his;

(iii) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgement; and

(iv) For any other substantial cause.

However, in all such cases the Appellate Court shall record its reasons for admission of additional evidence.

The appellate judgement must include the following essential factors:

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled to.

Drafting of Appeals

An appeal may be divided into three parts:

(1) formal part, known as the memorandum of appeal,

(2) material part, grounds of appeal, and

(3) relief sought for.

The memorandum of appeal should begin with the name of the Court in which it is filed. After the name of the Court, number of the appeal and the year in which it is filed are given. As the number is noted by the officials of the Court, a blank space is left for it. Then follow the names and addresses of the parties to the appeal. The name of the appellant is given first and then that of the respondent. It should be indicated against the names of the parties as to what character each party had in the lower Court, i.e., whether he was a plaintiff or a defendant, or an applicant or an opposite party, as:

A.B., son of etc. *(Plaintiff) Appellant*

Versus

C.D., son of etc. *(Defendant) Respondent*

Or

A.B., son of etc. *(Decree-holder) Appellant*

Versus

C.D., son of etc. *(Judgement-debtor) Respondent*

After the names of the parties, an introductory statement giving the particulars of the decree or order appealed from (viz., the number and date, the court which passed it, and the name of the presiding officer), should be written in some such form as:

"The above-named appellant appeals to the Court of___________ from the decree of____________ Civil Judge

At _________________ in Suit No___________________ passed on the_________________ and sets forth the following grounds of objections to the decree appealed from, namely". This may also be written in the form of a heading as:

"Appeal from the decree of _________________ Civil Judge of _________________ at _________________ in Suit No _____________________ passed on the________________".

Thereafter, the grounds of appeal be given under the heading "Grounds of Appeal". The grounds of appeal are the grounds on which the decree or the order appealed from is objected to or attacked. As a general rule, in the grounds of appeal, the following points may be raised:

(a) any mistake committed by the lower Court in weighing the evidence;

(b) any mistake in the view of law entertained by the lower Court;

(c) any misapplication of law to the facts of the case;

(d) any material irregularity committed in the trial of the case;

(e) any substantial error or defect or procedure;

(f) and the defect, error or irregularity of any *interlocutory* order passed in the case, whether the same was appealable or not.

A ground taken but not pressed in the first Appellate Court cannot be revived in second appeal. A defendant can question the propriety of *ex parte* proceedings in an appeal from the decree.

The general rule, besides being subject to Section 100 of the Civil Procedure Code, is also subject to two conditions:

(1) that the mistake of the lower Court should be material i.e., it should be such as affects the decision, and

(2) that the objection taken must be such as arises from the pleadings and evidence in the lower Court.

Drafting Grounds of Appeals

(i) Grounds of objection should be written distinctly and specifically;

(ii) They should be written concisely;

(iii) They must not be framed in a narrative or argumentative form; and

(iv) Each distinct objection should be stated in a separate ground and the grounds should be numbered consecutively.

These rules are simple but are most important and must be carefully remembered and observed while drafting Grounds of Appeal.

Relief Sought in Appeal

It is nowhere expressly provided in the Code that the relief sought in appeal should be stated in the memorandum of appeal. The absence of prayer for relief in appeal does not appear to be fatal and the Court is bound to exercise its powers under Section 107 of the Code and to give to the appellant such relief as it thinks proper. However, it is an established practice to mention in the memorandum of appeal, the relief sought by the appellant.

Signature

A memorandum of appeal need not be signed by the appellant himself. It may be signed by him or by his counsel but if there are several appellants and they have no counsel, it must be signed by all of them. It is not required to be verified.

Specimen Form of Appeal to the High Court

IN THE HIGH COURT OF__________________AT_________________________

CIVIL APPELLATE JURISDICTION

REGULAR CIVIL APPEAL NO__________________OF

IN THE MATTER OF:

A.B.C. Company Ltd. a company incorporated under the provisions of the Companies Act and having its registered office at ____

Appellant

Versus

M/s_______________________ a partnership concern (or XYZ company Ltd., a company incorporated under the Companies Act and having its registered office at ___________________________

Respondents

May it please the Hon'ble Chief Justice of the High Court of____________________ and his Lordship's Companion Justices,

The appellant-company

MOST RESPECTFULLY SHOWETH:

1. That the appellant herein is a company duly registered under the provisions of the Companies Act, 2013 and the registered office of the appellant is at __________ and the company is engaged in the business of manufacturing of __________.
2. That the respondents who are also doing business of selling goods manufactured by the appellants and other manufacturers approached the appellant for purchasing from the appellant-company the aforesaid manufactured goods. An agreement was reached between the parties which were reducing into writing. The appellant supplied goods worth Rs. __________ lacs over a period of _________________________ months to the respondents.

   A statement of account regarding the goods so supplied is annexed hereto and marked as *ANNEXURE A-1.*
3. That the respondents have made a total payment of Rs. __________ lacs on different dates. The statement of the said payments made by the respondents is appended and is marked as *ANNEXURE A-2*.
4. That the remaining amount has not been paid by the respondent despite repeated demands and issuance of a legal notice by the appellant through advocate.
5. That the appellant filed a suit for recovery of the aforesaid balance amount of Rs. __________ lacs together with interest at the rate of 12% per annum and the cost of the suit. The suit was filed on ________________ in the court of the learned District Judge.
6. That upon being summoned by the said court the respondents appeared through counsel and filed their written statement to which appellant-plaintiff also filed replication.
7. That the parties led evidence. After hearing the counsel for the parties, the learned District Judge has by his judgement and decree passed on__________________ dismissed the appellant's suit on the ground that the evidence led by the parties does not establish the claim of the appellant-plaintiff. Copies of the judgement and decree of the court below are annexed hereto and are marked as *ANNEXURE A-3 AND A-4*, respectively.

   Aggrieved by the aforesaid judgement and decree of the court below dismissing the suit of the plaintiff, this appeal is hereby filed on the following, amongst other,

GROUNDS

A. That the judgement and decree under appeal are erroneous both on facts as well as law.

B. That the learned trial court has failed to properly appreciate the evidence, and has fallen into error in not finding that the preponderance of probability was in favour of the plaintiff-appellant.

C. That there was sufficient evidence led by the plaintiff to prove the issues raised in the suit and the defendant-respondent has failed to effectively rebut the plaintiff's evidence, more particularly the documentary evidence.

D. ______________________________

E. ______________________________

F. ______________________________

8. That the valuation of this appeal for the purposes of payment of court-fee is fixed at Rs. ____________________ and the requisite court fee is appended to this memorandum of appeal.
9. That this appeal is being filed within the prescribed period of limitation, the judgement and decree under appeal having been passed on ________________________.

In the above facts and circumstances the appellant prays that this appeal be allowed, the judgement and decree under appeal be set aside and the decree prayed for by the appellant in his suit before the court below be passed together with up-to-date interest and costs of both courts.

APPELLANT

(__________________________)

THROUGH

(__________________________)

Advocate

VERIFICATION

Verified at________________ on this, the______day of__________________, 20______that the contents of the above appeal are correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

APPELLANT

WRIT PETITION

The Supreme Court and High Courts are authorized to issue five types of writs, under Articles 32 and 226 respectively. In fact, under Article 32, the Supreme Court can empower any other Court to issue the writs. But there has been no provision made so far by the court of law therefore to date only the Supreme Court and the High Courts can issue the writs. Earlier the High court of Bombay Madras and Calcutta had the power of issuing these writs, but after 1950 under Article 226 of the Constitution of India all the high courts were eligible to issue the writs. The concept of writs has been taken from England where it is known as prerogative writs. In England, the writs were issued in the exercise of the prerogative of the king who is still considered the Fountain of Justice. Later on, the High courts started to issue the writs as an extraordinary remedy to uphold the liberties of the Britishers.

Writs in Indian Constitution are filed according to Article 32 and Article 226. Before we proceed, it is important to learn about writs under Article 32 and 226 in detail.

	Writ under Article 32	***Writ under Article 226***
Type of Rights	Article 32 is a fundamental right.	Article 226 is a constitutional right.
Suspension of Articles	Article 32 can be suspended if the President declares an emergency.	Article 226 cannot be suspended even during an emergency.
Scope	Article 32 has a limited reach since it only applies when a fundamental right has been violated.	Article 226 on the other hand, has a greater reach since it applies not only to violations of fundamental rights but also to violations of legal rights.

	Writ under Article 32	*Writ under Article 226*
Territorial jurisdiction	Under Article 32, the Supreme Court has the authority to issue writs across India. As a result, the Supreme Court's territorial jurisdiction is broader and expanded.	Article 226, on the other hand, allows the High Court to issue a writ exclusively in its own local jurisdiction. As a result, the territorial authority of High Courts is narrower and limited.
Dismissal	Since Article 32 is a basic right, the Supreme Court cannot dismiss it.	Article 226 gives the High Court discretionary power, which means it is up to the High Court to decide whether or not to issue a writ.

Types of Writs

The Supreme Court and high court of India are empowered to protect the fundamental rights of citizens of India. For this, they can issue five types of writs to enforce the fundamental rights of the people of India. These five writs are explained below-

1. Habeas Corpus
2. Certiorari
3. Mandamus
4. Prohibition and
5. Quo-warranto.

1. **Habeas Corpus:** The writ of habeas corpus is a remedy available to a person who is confined without legal justification. The words "Habeas Corpus" literally mean "to have a body". This is an order to let the Court know on what ground he has been confined and to set him free if there is no legal justification for his detention. This writ has to be obeyed by the detaining authority by production of the person before the Court. Under Articles 32 and 226 of the Constitution, any person may move the Supreme Court and the High Court of competent jurisdiction respectively, for the issue of this writ. The applicant may be the prisoner himself moving the Court or any other person may move the Court on his behalf to secure his liberty praying for the issue of the writ of habeas corpus. No person can be punished or deprived of his personal liberty except for violation of any law and in accordance with the due process of law. Dis-obedience to the writ of habeas corpus attracts punishment for contempt of Court under the Contempt of Courts Act, 1971.

2. **Mandamus:** The expression "mandamus" means a command. The writ of mandamus is, thus, a command issued to direct any person, corporation, inferior Court or Government authority requiring him to do a particular thing therein specified which pertains to his or their office and is further in the nature of a public duty. This writ is used when the inferior tribunal has declined to exercise jurisdiction. Mandamus can be issued against any public authority. The applicant must have a legal right to the performance of a legal duty by the person against whom the writ is prayed. Mandamus is not issued if the public authority has a discretion.

   Mandamus can be issued by the Supreme Court and all the High Courts to all authorities. However, it does not lie against the President of India or the Governor of a State for the exercise of their duties and powers (Article 360). It also does not lie against a private individual or body except where the State is in collusion with such private party in the matter of contravention of any provision of the Constitution or of a Statute. It is a discretionary remedy and the Court may refuse if alternative remedy exists except in case of infringement of Fundamental Rights.

3. **Prohibition:** The writ of prohibition is issued by the Supreme Court or any High Court to an inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it. It compels courts to act within their jurisdiction when a tribunal acts without or in excess of jurisdiction or in violation of rules or law.

   The writ of prohibition is available only against judicial or quasi-judicial authorities and is not available against a public officer who is not vested with judicial functions. If abuse of power is apparent this writ may be prayed for as a matter of right and not a matter of discretion. The Supreme Court may issue this writ only in case of Fundamental Rights being affected by reason of the jurisdictional defect in the proceedings. This writ is available during the pendancy of the proceedings and before the order is made.

4. **Certiorari:** The writ of certiorari is available to any person whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, acts in excess of its legal authority. The writ removes the proceedings from such body to the High Court in order to quash a decision that goes beyond the jurisdiction of the deciding authority.

5. **Quo warranto:** The writ of quo warranto is prayed, for an inquiry into the legality of the claim which a person asserts to an office or franchise and to oust him from such position if he is an usurper. The holder of the office has to show to the Court under what authority he holds the office. This writ is issued when:

   (i) the office is of a public and of a substantive nature;

   (ii) the office is created by a Statute or by the Constitution itself; and

   (iii) the respondent must have asserted his claim to the office. It can issue even though he has not assumed charge of the office.

   The fundamental basis of the proceedings of quo warranto is that the public has an interest to see that no unauthorised person usurps a public office. It is a discretionary remedy which the Court may grant or refuse. When an applicant challenges the validity of an appointment to a public office, it is maintainable whether or not any fundamental or other legal right of such person has been infringed. This writ is intended to safeguard against the usurpation of public offices

SPECIMEN FORM OF WRIT PETITION

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

IN

CIVIL MISC. WRIT PETITION (P.I.L) NO. _________ OF 2020

(PETITION UNDER ARTICLE _________ OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF ___________ UNDER ARTICLE _______ OF THE CONSTITUTION OF INDIA.)

District- _________________

____ Petitioner

versus

____ Respondents

To,

Hon’ble the Chief Justice of India and His Lordship’s Companion Justices of the Supreme Court of India. The Humble petition of the Petitioner abovenamed.

MOST RESPECTFULLY SHEWETH:

1. Facts of the case
2. Question(s) of Law
3. Grounds
4. Averment: -

   That the present petitioner has not filed any other petition in any High Court or the Supreme Court of India on the subject matter of the present petition.

PRAYER

In the above premises, it is prayed that this Hon'ble Court may be pleased:

(i) ____

(ii) to pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case.

FOR WHICH ACT OF KINDNESS, THE PETITIONER SHALL AS IN DUTY BOUND, EVER PRAY.

FILED BY:

PETITIONER-IN-PERSON

DRAWN:

FILED ON:

The Writ Petition should be accompanied by:

(i) Affidavit of the petitioner duly sworn.

(ii) Annexures as referred to in the Writ Petition.

(iii) Court fee of Rs__________ per petitioner (In Crl. Matter no court fee is payable)

(iv) Index (As per Specimen enclosed)

(v) Cover page

(vi) Any application to be filed, Rs _______________ per application.

(vii) Memo of Appearance.

(viii) Application seeking permission to appear and argue in person (in case of petition filed by petitioner-in-person), Court fee ____________________

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Sl. No.	*PARTICULARS*	*PAGES*
1.	Synopsis and List of Dates	
2.	Writ Petition alongwith Affidavit in support	
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4.	Application if any	

Affidavit

An affidavit is a sworn statement in writing made especially under oath before an authorized officer. Therefore, great care is required in drafting it. A Court may, at any time, for sufficient reason order that any particular fact or facts may be proved by affidavit or that the affidavit of any particular witness may be read at the hearing, provided that the Court may order the deponent to appear in person in Court for cross-examination [Order XIX Rule 2(1)].

Affidavits to be produced in a Court must strictly conform to the provisions of order XIX, Rule 1 of the Code of Civil Procedure, 1908 and in the verification it must be specified as to which portions are being sworn on the basis of personal knowledge and which, on the basis of information received and believed to be true. In the latter case, the source of information must also be disclosed. Order XIX Rule 3 provides that affidavit should be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory application, on which statements on his belief may be admitted; provided that the grounds of such belief are stated. The following rules should be remembered when drawing up an affidavit:

(1) Not a single allegation more than is absolutely necessary should be inserted;

(2) The person making the affidavit should be fully described in the affidavit;

(3) An affidavit should be drawn up in the first person;

(4) An affidavit should be divided into paragraphs, numbered consecutively, and as far as possible, each paragraph should be confined to a distinct portion of the subject (Order XIX Rule 5);

(5) Every person or place referred to in the affidavit should be correctly and fully described, so that he or it can be easily identified;

(6) When the declarant speaks of any fact within his knowledge he must do so directly and positively using the words "I affirm" or "I make oath and say";

(7) Affidavit should generally be confined to matters within the personal knowledge of the declarant, and if any fact is within the personal knowledge any other person and the petitioner can secure his affidavit about it, he should have it filed. But in interlocutory proceedings, he is also permitted to verify facts on information received, using the words "I am informed by so and so" before every allegation which is so verified. If the declarant believes the information to be true, he must add "and I believe it to be true" or "I make oath and say" (Order XIX Rule 8).

(8) When the application or opposition thereto rests on facts disclosed in documents or copies, the declarant should state what is the source from which they were produced, and his information and belief as to the truth of facts disclosed in such documents;

(9) The affidavit should have the following oath or affirmation written out at the end:

"I swear that this my declaration is true, that it conceals nothing, and that no part of it is false".

or

"I solemnly affirm that this my declaration is true, that it conceals nothing and that no part of it is false". Any alterations in the affidavit must be authenticated by the officer before whom it is sworn. An affidavit has to be drawn on a non-judicial Stamp Paper as applicable in the State where it is drawn and sworn.

An affidavit shall be authenticated by the deponent in the presence of an Oath Commissioner, Notary Public, Magistrate or any other authority appointed by the Government for the purpose.

(10) Affidavits are chargeable with stamp duty under Article 4, Schedule I, Stamp Act, 1899. But no stamp duty is charged on affidavits filed or used in Courts. Such affidavits are liable to payment of Court fee prescribed for the various Courts.

Specimen Affidavit of Creditor in proof of his debt in Proceeding for the Liquidation of a Company

IN THE (HIGH) COURT OF____________________________

In the matter of Companies Act, 2013

And

The matter of the liquidation of___________________________ Company Limited.

I, A.B., aged_________ years, son of Shri ____________________ resident of____________________, do hereby on oath (or on solemn affirmation) state as follows:

1. That the above-named company was on the______ day of_____________, 20_____, the date of the order for winding up the same, and still is justly and truly indebted to me in the sum of Rupees _________________ (Rs_________) only in account of (describe briefly the nature of the debt).
2. That in proof of the aforesaid debt I attach hereto the documents marked A, B and C.
3. That I have not, nor have any person or persons by my order or to my knowledge or belief for my use, received the aforesaid sum of Rupees _______________ or any part thereof, or any security or satisfaction for the same or any part thereof except the sum or security (state the exact amount of security).
4. That this my affidavit is true and, that it conceals nothing and no part of it is false.

Dated

Sd/- A.B.

Deponent

Verification

I, the abovenamed deponent, verify that the contents of paragraphs 1 to 4 of this affidavit are true to my personal knowledge.

Sd/- A.B.

Dated____________________

I,__________________________S/o ___________________ R/o ___________________________ declare, from a perusal of the papers produced by the deponent before me that I am satisfied that he is Shri A.B. Solemnly affirmed before me on this_______ day of________________ 20_______ at_________________ (time) by the deponent.

Sd/-_________________

(Oath Commissioner)

INDEMNITY BONDS & UNDERTAKINGS

As per Section 124 of the Indian Contract Act of 1872, an Indemnity bond refers to an agreement between two persons or parties, where one person promises to make payment for the losses and damages of another person caused by his/her conduct or by another party. In other words, it is a financial contract drawn between two parties that promise financial security to a person as the aggrieved party can claim monetary compensation if the contract is breached. The Indemnity bond is primarily used in the mortgage, accounting, law, IT, and insurance industries.

Undertaking is a promise to do something on happening or non-happening of certain event as may be undertaken by person promising therein. Undertaking can be said to be a formal promise or pledge entered into by a person and if it was given to the court then additionally it was a promise to act in a particular manner.

DRAFTING OF AFFIDAVIT IN EVIDENCE – IMPORTANT CONSIDERATIONS

The provisions of erstwhile Sections 101, 102, 103, 106, 109, 110 and 111 of the Indian Evidence Act, 1872(now 104, 105, 106, 112, 113 and 114 of Bharatiya Sakshya Adhiniyam, 2023) must be carefully gone through before one proceeds to draft the affidavit-in-evidence. It is well settled that evidence should be tailored strictly according to the pleadings. No extraneous evidence can be looked into in absence of specific pleadings (*Habib Khan v. Valasula Devi, AIR 1997 A.P 52*). The following must be kept in mind while preparing the affidavit-in-evidence by the parties –

(i) The best evidence is that of a person who was personally involved in the whole transaction. In case, that person is not available for any reason, then any other person who has joined in his place to make deposition by way of his affidavit.

(ii) In case, the petitioner himself was involved in the execution of a contract, he should file affidavit-in evidence.

(iii) The allegations or charges or grounds relating to facts should be re-produced duly supported by documentary evidence. It may be noted that in the affidavit in evidence, the position of law or legal provisions or principle of law are not reproduced because the position of law or settled principles of law are not required to be proved by any party and they are deemed to exist and any party can argue and take help of those settled position of law while arguing their case before the Court or Tribunal or Forum and need to be proved by filing an evidence. (Section 3 of Bharatiya Sakshya Adhiniyam, 2023)

(iv) In case, the point or issue pertains to engineering, medical, technology, science or other complex or difficult issues, then the evidence of expert is to be filed in the form of his Affidavit. If necessary, the said witness has to appear before the Forum for the purpose of cross-examination by the counsel for the other party. For example, hand-writing or finger print experts etc.

(v) Besides the leading evidence on the points raised by the petitioner or by the opposite party in his written statement/reply, if possible, the party who is filing the affidavit-in-evidence should also file documents, papers or books or registers to demolish the defence or case set up by the opposite party.

(vi) It is also permissible for any party to bring any outside witness (other than the expert witness) in support of his case if the facts and circumstances of the case so warrant and permitted by the Court/ Tribunal.

(vii) At the time of tendering affidavit-in-evidence, the party must bring along with it either the original of papers, documents, books, registers relied upon by it or bring with it the copy of the same.

According to section 2(1)(e) of Bharatiya Sakshya Adhiniyam, 2023, “evidence” means and includes—

(i) all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence;

(ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence.

ARGUMENTS ON PRELIMINARY SUBMISSIONS

Preliminary submissions should primarily confine to the true and correct facts regarding the issue involved and which have been suppressed or not disclosed by the other side in the pleadings. Additionally the provisions of law or legal objections relevant and applicable to the issues involved in the matter should also be mentioned so as to demonstrate that the relief being claimed by the opponent is not eligible to be granted and/or that the relief being claimed by the party being represented by a lawyer/authorized representative should ordinarily be allowed as per those provisions of law. Before incorporating such facts and/or provisions of law in the write-up, a lawyer/ authorized representative should be thorough with the provisions of law and interpretation, thereof, based upon relevant judgments so as to ensure that the submissions being made on behalf of the client are accepted and upheld by the Presiding Officer/Court/Tribunal as the case may be. Thus, for eg., if a claim being opposed by a lawyer/authorized representative is evidently barred by limitation, such an objection should be taken in the preliminary submissions/objections. Such type of submissions/objections should be duly supported by law on the point or by relevant case law/judgments.

ARGUMENTS ON MERITS

Such arguments as relate to the facts pleaded by the parties are termed as arguments on merits. While addressing arguments on merits, a lawyer/authorized representative should carefully point out the pleadings of the parties and the relevant evidence in support thereof, lead by the parties, both oral as well as documentary. A lawyer/ authorized representative should ensure that all or any contradiction in the pleadings of the opponent and the evidence in support of such pleadings are duly pointed out while submitting his/her arguments. Thus, where an agreement/contract of service is pleaded and there is no evidence either oral or documentary on record in support of such an agreement/contract, it should be specifically pointed out that the opponent has failed to prove/establish that such an agreement/contract actually exists or that the same had actually been executed at all. Similarly, where notice is alleged to have been served prior to filing of the case and there is no documentary evidence like postal receipt/courier receipt placed on record by the opponent, it should be pointed out that the opponent has failed to establish that the notice had actually been served. Furthermore, the relevant facts and/ or contradictions extracted from the opponent or his/her witness during the course of cross-examination and relating to the factual issues involved in the matter, should be highlighted so as to draw attention of the Court/ Tribunal towards such facts/contradictions.

LEGAL PLEADINGS/WRITTEN SUBMISSIONS

As already pointed out above, legal pleadings/submissions should be taken under the heading “preliminary submissions/objections”. While taking such plea one should ensure that the legal provisions and/or interpretation, thereof, is very clear and directly applicable to the issues involved in the matter. Thus, where an unregistered agreement/contract forms the basis of a claim set up by a party and such an agreement/ contract compulsorily requires registration under Section 17 of the Registration Act, a legal plea should be taken that since the agreement/contract is not a registered document, the same could not be looked into or relied upon by the Court for the reasons that the same cannot be read in evidence. Similarly, all other legal submissions which go to the root of the controversy and which are sufficient as well as material for adjudication of the issues involved, should be taken in opposition to the claims put forth by the opponent. Some illustrations are as under:

(i) Suit is not maintainable for want of statutory notice etc.

(ii) Plaint does not disclose cause of action.

(iii) Plaintiff has no right to sue.

(iv) Suit barred by principles of res-judicata.

(v) Suit barred by principles of waiver, estoppel, acquiescence.

(vi) Suit is barred by special enactment.

(vii) Court has no jurisdiction.

(viii) Suit is barred by limitation.

(ix) Suit is premature, and so on.

Some of these are known technically as ‘special defences’. In a suit based on contract, defendant may admit that he made the contract, but may avoid the effect of admission by pleading performance, fraud, release, limitation etc.

WITNESSES IN PLEADINGS

Witnesses in Pleadings is not defined in Code of Civil Procedure, 1908. It can be presumed in form of affidavit and notarised document. The term “affidavit” is also not defined in the Code but it generally means “a sworn statement in writing made especially under oath or on affirmation before an authorised officer or Magistrate.” Order 19 deals with the affidavits. An affidavit is, to put it simply, a written declaration of facts that is sworn in front of a witness with the power to conduct oaths. Every affidavit must be written and should only include facts, not conclusions. The person who makes it and signs it is known as Deponent. In the affidavit, the contents are true and correct to the knowledge of the person who signed it and he has nothing concealed material therefrom. The affidavit must be paragraphed and numbered as per the provision of the code. It should be duly attested by the Notary or Oath commissioner appointed by the court of law. According to Code of Civil Procedure Affidavit should be notarized by Notary only and same should not be attested either by Chartered Accountant or Company Secretary or Cost Accountant. The duty of the notary and oath commissioner is to ensure that the signature of the deponent is not forged. The purpose of notarisation is to certify genuineness and proper execution of documents in order to prevent fraud. Notarisation is done by a notary public appointed by the state or central government. He is also authorised to administer oath and take an affidavit from any person. A notarised document is complete once the notary signs it and stamps it with a notary seal, his registration number and date. He also makes an entry of the notarial act in his register. A notary is considered an impartial witness who verifies that parties to an agreement have signed it and have entered into the agreement knowingly and willingly.

IMPROPER ADMISSIONS IN PLEADINGS

Improper admissions is not used anywhere in CPC, however admission is defined. An admission is a statement made by the parties to a legal proceeding, either oral, documentary or contained in electronic form, which suggests an inference with respect to any fact in issue or relevant fact. Order XII Rule 6 of the Civil Procedure Code, 1908 provides for judgment on admissions and being an enabling provision, it is neither mandatory nor pre-emptory, but discretionary. Order XII Rule 1 provides that a party can admit the case of the other party, entirely or partially, by giving a notice. The notice should be in writing. Under Rule 2, a party may issue a notice to the other party to admit or refuse to admit any document. The opposite party has to admit the document within 7 days of the service of notice. If the party on whom the notice is served refuses or neglects to admit the document, the onus of bearing the cost of proving the document will be on the refusing or neglecting party. If a notice of admission has been issued by one party and the other party does not specifically deny the document or does not admit it in his pleading or reply, it will be deemed that the document has been admitted. The only exception is where the opposite party is a disabled person. Order 12 Rule 3A confers the power on the court to call upon any party to admit a document and to record the admission or denial of the party. The proviso to Rule 4 clarifies that admissions made by virtue of a notice under a particular proceeding cannot be used against the party making the admission in any other proceedings relating to any other suit. Under Order 12 Rule 6, the Courts have the power to make a judgement in regards to any oral or written admission made by the parties at any stage of the proceedings. Such admission may be made in the pleading or otherwise.

In the case of *Karan Kapoor v. Madhuri Kumar (2022)* the Apex Court noted that the power under Order 12 Rule 6 should be exercised only where the admission of documents or facts is clear, unambiguous and categorical. The admissions made in the present case were neither clear nor categorical and therefore the judgment of the Trial Court was liable to be set aside.

REJECTIONS IN PLEADINGS - ORDER 7, RULE 11

When any plaint is presented to the court, then it is the first duty of the court to examine the plaint properly for the determining, whether it should be tried, or returned, or rejected and in order to determine the question regarding the rejection of the plaint, and it is also the responsibility of the court to take consideration of other material facts too. Order 7 rule 11 of CPC mentions the provisions, where the plaint should be rejected. The plaint will be rejected in the following cases: -

1. Where plaint does not disclose the cause of action,
2. Where relief claimed is undervalued,
3. Where plaint is insufficiently stamped,
4. Where suit is barred by law,
5. Where plaint is not in duplicate, and
6. Where there is non-compliance with statutory provisions.

Under order 7 rule 11 the grounds for rejection are not exhaustive. A plaint can be rejected on other grounds also, for example, if the plaint is signed by the person not authorised by the plaintiff and if the defect is not cured within the time granted by the court, the plaint can be rejected. Likewise, where the plaint is found to be vexatious and meritless, not disclosing a clear right to sue, the court may reject the plaint under this rule.

The power conferred on the code under order 7 rule 11 is drastic in nature. Conditions precedent to exercise the said power is stringent. Hence, it is the duty of the court before exercising this power that such conditions are fulfilled. The power to reject the plaint can be exercised by the court at any stage of the suit.

LEGAL NOTICE AND ITS REPLIES

A legal notice is basically a legal intimation that is sent to the opponent, it indicates that the aggrieved is preparing a lawsuit to be filed against the concern, in the case the demand that is mentioned in the notice does not get fulfilled. Therefore, a legal notice can be defined as a formal communication to any legal entity or to a person, informing the other party about the intention of undertaking legal proceedings against them. The legal notice serves the purpose of giving an opportunity to the opposite party to reconsider his legal position and to make amendments or afford restitution without proceeding to a Court of Law. The notice helps to settle the disputes outside the Court. Majority of matters settle before the trial commences. The notice gives the opportunity to the opposite party to rethink or reconsider their stance. To avoid a legal dispute the parties can take necessary actions if in their opinion the case can be settled. The parties can settle the matter through negotiation, mediation or arbitration. The Legal Notice acts as a warning against the offender, a fair chance is given to both the parties to resolve their dispute, and provide an amicable settlement. Legal notice must mention the following points

- Name and address of the parties
- Facts and grievances
- Compensation
- Signature

The procedure of sending a legal notice includes -

i. The legal notice must be addressed to the person against whom the grievances arise.

ii. A legal notice must be sent on a plain paper or on the letterhead of a lawyer.

iii. The legal notice must categorically mention the time period in which the addressee must respond to the notice, the time period can be 30 to 60 days. The time period must be stipulated within which the other party is expected to fulfil the demands.

iv. The legal notice should be signed by the lawyer as well as the sender.

v. The legal notice must be sent either through a registered post or courier. It is advisable to ensure that the acknowledgement is retained.

Replying to a legal notice is the mix of the process of replying to a written statement and drafting of notice. The reply starts with the mention of the basic details of the legal notice received - date, details of the entity on behalf of whom the legal notice was sent etc. It may also contain mention of claims of legal notice received as false, or something of similar nature. The legal notice then starts with preliminary objections and then moves on to "reply on merits" - replying to the legal notice point/paragraph wise, and may not necessarily contain such a heading. This process is very similar to the drafting of a written statement or rejoinder.

Specimen Format: Legal Notice: Filed by Vendor for payment of immovable property

Ref. No. ________________ Dated ________________

REGD. A.D.

SUB.: LEGAL NOTICE

To,

____

Dear Sir/Madam,

Pursuant to the instructions from and on behalf of my client ______________________, resident of ____________________ I do hereby serve you with the following Legal Notice: –

i. That my client had entered into an agreement of sale dated ______ with you.

ii. That the sale agreement was for the selling of house no. _____, situated at ___________ for a consideration of Rs. _____.

iii. That according to the clause ____ of the agreement, the said transaction is to be completed within _____ months from the date of said agreement.

iv. That my client was and is still willing and ready to execute a sale deed in your favour or in favour of any person as you may direct in accordance with the terms of the said agreement, but it couldn't be done because of the default of the payment.

I hereby call upon you to have the deed of conveyance executed by my client against payment of the balance of the consideration money on or before the _____ day of ________________, 20____ in terms of the said agreement, failing which the said agreement will stand cancelled and the earnest money paid by you will stand forfeited. However, this is without prejudice to the rights of my client to recover all costs, damages, losses and expenses incurred by him by reason of your default in performing the said agreement.

A copy of this Notice is kept in my office for record and further necessary action and you are also advised to keep the copy safe as you would be asked to produce in the court.

(_________________________________)

Advocate

LESSON ROUND-UP

- In the ancient times when the king was the fountainhead of all justice, a petitioner used to appear before the king in person and place all facts pertaining to his case before His Majesty. After such oral hearing, the King used to summon the other party and thereafter listen to the defence statements put forward by the person so summoned.
- The document stating the cause of action and other necessary details and particulars in support of the claim of the plaintiff is called the "plaint". The defence statement containing all material facts and other details filed bythe defendant is called the "written statement".
- The four fundamental rules of pleadings are:
    1) That a pleading shall contain, only a statement of facts, and not Law;
    2) That a pleading shall contain all material facts and material facts only;
    3) That a pleading shall state only the facts on which the party pleading relies and not the evidence by which they are to be proved;
    4) That a pleading shall state such material facts concisely, but with precision and certainty.
- Court and tribunals are constituted to do justice between the parties within the confines of statutory limitations, and undue emphasis on technicalities or enlarging their scope would cramp their powers, diminish their effectiveness and defeat the very purpose for which they are constituted.
- Preventive Relief is granted at the discretion of the court by injunction, Temporary or Perpetual. The Relief of Injunction is an equitable relief and he who seeks equity must do equity. Hence, a party who asks for an injunction must be able to satisfy the court that his dealing of the matter had been fair, honest and free of any fraud or illegality.
- The object of notice under section 80 of CPC is to give the government or the public officer concerned an opportunity to reconsider the legal position and if that course is justified to make amends or settle the claim out of court.
- Suit of a civil nature is ordinarily tried in civil court. Every person has a right to bring a suit of a civil nature and civil court has jurisdiction to try the suits of a civil nature. Due to increasing litigation and delays in civil suits, parliament and state legislative created special courts and Tribunals with special enactments.
- When a petition is filed seeking interim relief, it is registered as miscellaneous petition. A Memo filed before the Court of Law need not be treated as Petition. The main difference between Petition and Memo is that Memo is nothing but bringing a fact to notice before a Court of Law and no relief can be sought for in a Memo and notice to the opposite party is not required.
- The Supreme Court and High Courts are authorized to issue five types of writs, under Articles 32 and 226 respectively. In fact, under Article 32, the Supreme Court can empower any other Court to issue the writs. But there has been no provision made so far by the court of law therefore to date only the Supreme Court and the High Courts can issue the writs.

GLOSSARY

Pleadings: pleadings are statements in writing drawn up and filed by each party toa case, stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer.

Dilatory Pleas: They simply raise formal objections to the proceedings and do not give any substantial reply to the merits of the case, e.g., the plea that the court-fee paid by the plaintiff is not sufficient. Such pleas should be raised at the earliest opportunity.

Written statement: Written statement is the statement or defence of the defendant by which he either admits the claim of the plaintiff or denies the allegations or averments made by the plaintiff in his plaint.

Special Leave Petition: In suitable cases, where some arguable questions, mostly on legal points are involved, the Constitution confers under Article 136 wide discretionary powers on the Supreme Court to entertain appeals even in cases where an appeal is not otherwise provided for.

Affidavit: An affidavit is a sworn statement in writing made especially under oath before an authorized officer.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Define Pleading. Discuss its importance. What are the fundamental rules of pleadings?
2. What does a plaint structure contain?
3. What are the preferences in drafting a Written Statement?
4. Draft a notice of suit under Section 80, C.P.C.
5. Draft a petition under Article 226 of the Indian Constitution for the issues of Writ of Habeas corpus.
6. Draft a Specimen of Appeal to the High Court.
7. Define 'affidavit'. What rules and guiding principles should be followed while drawing up an affidavit?

LIST OF FURTHER READINGS

- Bare Act of Civil Procedure Code, 1908
- Drafting, Conveyancing and Pleadings (1982); 2nd Ed., N.M. Tripathi (P.) Ltd., Bombay

  G. M. Kothari and Arvind G. Kothari
- The Law of Pleadings in India (1987); 14th Ed. Rev. by Justice K.N. Goyal, etc. Eastern Law House, Calcutta

  P.C. Mogha

OTHER REFERENCES (Including Websites/Video Links)

- https://www.indiacode.nic.in/bitstream/123456789/2191/1/eng.pdf

Art of Advocacy and Appearances

Lesson 11

KEY CONCEPTS

■ Oral Pleadings ■ Advocacy ■ Rule of Adverse Inference ■ Court Craft ■ Professional Etiquettes

Learning Objectives

To understand:

- The Professional Etiquettes for a Professional
- The Court Craft from the perspective of a Company Secretary Professional
- The duties of a Practising Professional towards Tribunal/Court, Client and Opponent
- Principle for advocacy
- Pre-requisites for appearance
- The Etiquettes of Appearance for a Professional

Lesson Outline

- Introduction
- Professional Etiquettes
- Court Craft
- Conduct & Etiquettes
- Important principles of Advocacy
- Advocacy Tips
- Appearance Etiquettes
- Arguments on Merits
- Pre-requisites for entering Appearance
- Dress Code
- Guidelines for Professional Dress of Company Secretaries
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites/video links)

INTRODUCTION

The corporate sector has recognized the role of the Company Secretaries as a compliance officer and as a nodal point of contact between the company and its shareholders, debenture holders, depositors, financial institutions and the Government. The Company Secretaries in practice are rendering value added services to corporate sector as independent professionals. Apart from this a Company Secretary can appear as an authorized representative before NCLT, Competition Commission of India (CCI), Securities Appellate Tribunal (SAT), Telecom Regulatory Authority of India (TRAI) and various other Tribunals. Therefore, it is of vital important to a Company Secretary to learn the Advocacy and Appearance Skills and practice these during the discharge of duties during the assignments.

PROFESSIONAL ETIQUETTES

Etiquette is the fine art of behaving in front of others. It is a set of practices and forms which are followed in a wide variety of situations. Many people consider it to be a branch of decorum, or general social behavior. Each society has its own distinct etiquette, and various cultures within a society also have their own rules and social norms.

In today's world of business, professionals need to know how to conduct themselves within the business world. One of the best ways to do so is to practice good professional etiquette. Practicing good professional etiquette is necessary for professional success in the emerging business scenario which is constantly changing and making the market place more competitive and contestable. Corporates look for those candidates who possess manners, a professional look and demeanor, and the ability to converse appropriately with business colleagues and clients. Though your academic knowledge and skills may be spectacular, but not knowing proper etiquette required to be successful in the professional career could be a roadblock preventing you to achieve success in the professional life and business relationships. Good professional etiquette indicates to potential employers that you are a mature, responsible adult who can aptly represent their company.

Dealing a client with confidence, acting appropriately at business interactions and knowing the proper table manners at a business dinner are just some of the necessary skills today's professionals must have in an increasingly competitive environment, and that will leave a lasting impression – good or bad. Some manners and behaviour remain constant. Nonetheless, other etiquette moments require you to conduct yourself differently than you do when you are with professional colleagues or clients at any business meeting/get-together. It is in these moments that you need to understand the particulars of etiquette. Being corporate professionals, you must practice some basic etiquette tips that would help you to go up the ladder of success in the workplace. These include Dressing Etiquette; Introduction and Greeting Etiquettes; Conversation Etiquette; Communication Etiquettes; Invitation Etiquette and Dining Etiquettes etc.

Dressing Etiquette

With every organization program comes the inevitable question: What do I wear? Knowing what to wear, or how to wear something, is key to looking great in any event.

- Always wear neat and nicely pressed formal clothes. Choose corporate shades while you are picking up clothes for your office wear.
- Ties for men should compliment.
- Women should avoid wearing exposing dresses and opt for little but natural make-ups. Heels should be of appropriate or modest height.
- Men need to keep their hair (including facial hair) neatly trimmed and set.
- Always polish your shoes.

- Keep your nails clean.
- Wear clothes which you are comfortable in and can carry well. This is very important while you are in a business meeting or client presentation.

Etiquette When Attending Hearings

All members shall endeavour to adhere to the following:

a) Do not enter the court room chewing gum or toffee, beetle-leaf, tobacco, gutkha, mouth freshener, pan-masala, or any eatables.

b) Do not enter the court room in an inebriated state.

c) Switch off all mobile and other beeping devices or put them on silent mode (non-vibrating) and keep them inside the bag or pocket before entering the courtroom as these may disrupt the proceedings.

d) Enter the courtroom or office of the Presiding Authority silently and bow/greet to the Presiding Authority as a sign of respect before proceeding to your seat.

e) Silence must be observed at all times during the hearing.

f) Ensure that all loose sheets of papers are securely fastened, indexed and tagged so as not to waste the time of the court in locating the documents.

g) Ensure that all documents needed for the hearing are available with you, including copies already submitted in advance with the authority.

h) Behave in a polite and courteous manner with all present in the court room and maintain decorum.

i) Do not attempt to capture photographs or audio/video record during the proceedings.

j) All efforts must be made to observe the above etiquettes as well, even while attending virtual hearing. Further for virtual hearing the member shall ensure that the environment from which the member is appearing (virtually) is in line with the prescribed directions and/or recommended standards for such virtual appearance.

Handshake Etiquette

Etiquette begins with meeting and greeting. A handshake is a big part of making a positive first impression. A firm shake is an indication of being confident and assertive. The following basic rules will help you get ahead in the workplace:

- Always rise when introducing or being introduced to someone.
- Shake hands with your right hand.
- Shake hands firmly (but not with a bone crushing or fish-limp grip), and with only one squeeze.
- Hold it for a few seconds (only as long as it takes to greet the person), and pump up and down only once or twice.
- Make eye contact while shaking hands.

Communication Etiquettes

- Always speak politely. Listen to others attentively. A good listener is always dear to every client.
- While speaking over telephones, always greet the other person while starting and ending the call.
- Speak only when the other person has finished talking instead of interrupting in between.

- Show interest in what other people are doing and make others feel good.
- Stand about an arm's length away while talking to others.
- Question another person in a friendly, not prying, manner.
- Make eye contact when talking to others.
- Be polite.
- Avoid foul language, unkind statements, and gossip.
- Keep your conversations short and to the point.
- Maintain your sobriety and politeness even if the client speaks something offensive or rude and avoid replying back in harsh tone/words.

Invitation Etiquette

How you respond to an invitation says volumes about your social skills. It reflects negatively on your manners if your response (or lack of response) to an invitation costs time or money for your host.

- Reply by the date given in the invitation, so that the host or hostess knows what kind of arrangements to make for the event, food is not wasted, and unnecessary expense is eliminated.
- If an RSVP card is not included, respond by calling or sending a brief note.
- If you cancel after initially accepting an invitation, phone your regrets as soon as possible.
- Send a note of regret following the phone conversation.
- Don't ask for permission to bring a guest unless the invitation states.
- Arrive at the event promptly, but not too early.
- Mingle and converse with the other guests.
- Don't overstay your welcome.
- Extend your thanks as you leave.

That apart, you must pay special attention to the following general etiquettes: Always be punctual at your workplace; During a meeting, turn off your mobile phone or put it on silent mode. It is considered extremely impolite to allow a mobile phone to ring during a meeting and take a call while sitting in a meeting. In case it is a must to receive a phone call, it is best to discreetly excuse yourself from the meeting and take it out into the hall or private area; When in a meeting room, always stand up to greet the seniors if they arrive after you; Try to ignore and overlook funny or embarrassing sounds when in a meeting or official conversation; If you have forgotten somebody's name ask him/her politely saying that you are sorry that you cannot remember the name; Always keep a comfortable distance while conversing with others; Avoid standing or sitting too close to the other person. An arm's length would be ideal to maintain the comfort zone.

COURT CRAFT

Practicing these etiquettes in your professional life, will make a great impact on everyone you are associated with. You must always be conscious that your mannerisms reflect on your professionalism and your company. Company Secretaries act as an authorized representative before various Tribunals/Quasi-judicial bodies. It is necessary for them to learn art of advocacy or court craft for effective delivery of results to their clients when they act as an authorized representative before any tribunal or quasi-judicial body.

For winning a case, art of advocacy is important which in essence means to convince the judge and others that my position in the case is the proper interpretation. Advocacy/court craft is learned when we enter the practicising side of the profession. The aim of advocacy is to make judge prefer your version of the truth.

Apart from the legal side of the profession, advocacy is often useful and sometimes vital, in client interviewing, in negotiation and in meetings, client seminars and public lectures. It is a valuable and lifelong skill worth mastering.

Technical and legal knowledge about the area in which Company Secretaries are acting is essential. Better their knowledge, the better their advocacy skills and the greater their impact. Good advocacy or negotiating skills will not compensate for lack of appropriate knowledge.

Preparatory points

There are certain basic preparatory points which a Company Secretary should bear in mind when contacted by a client.

- Take minute facts from the client;
- Lend your complete ears to all that client has to say;
- Put questions to the client while taking facts so that correct/relevant facts can be known;
- Convey to the client about exact legal position in context of relief sought by the client;
- Give correct picture of judicial view to the problem posed by the client.

Drafting of Pleadings

Pleadings could be both written and oral. Mastering both the kinds of pleadings is must for effective delivery of results to the clients. Some of the important factors which may be borne in mind while making written pleadings are as under:

- Quote relevant provisions in the petition and excerpts of observations made by the Courts relevant to the point;
- Draft prayers for interim relief in such a manner which though appears to be innocuous but satisfy your requirements;
- Do not suppress facts;
- Highlight material facts, legal provisions and Court decisions, if any;
- State important points at the outset together with reference to relevant provisions/judgements.

If you are opponent

- File your reply to the petition at the earliest opportunity;
- Take all possible preliminary contentions together with reference to relevant law point and judgements;
- Submit your reply to each paragraph of the petition.

If you are for the petitioner

- File your rejoinder upon receiving the reply at the earliest opportunity and this is to be done on the permission of the concerned Court / Tribunal;
- Meet clearly with the specific points raised by the opponent in the reply affidavit.

Oral Pleadings

Effective oral pleadings are relevant both at the stage of preparation of the case before actual presentation and also at the stage of actual presenting a case before NCLT or other tribunals. Following aspects could be relevant at both these stages:

- Preparation before presentation of the case;
- Carefully read your petition, provisions of law and judgements;
- Note down relevant points on a separate sheet of paper together with relevant pages of the compilation;
- Keep copies of judgements to be relied ready for the Court and for your opponent(s).

While Presenting Your Case

- Submit a list of citations to the Court Master before opening of case;
- Start your address to the Court / Tribunal with humble note;
- Refer to the order sought to be challenged or reliefs sought to be prayed;
- State brief facts;
- Formulate issues/points, categorise them and address them one by one;
- Take each point, state relevant facts, provisions of law and relevant binding decisions;
- Hand over xerox copies of binding decisions to the Court Master while placing reliance;
- Refer to relevant pages of the compilation, provisions of law and judgements;
- Complete all points slowly but firmly;
- Conclude your arguments by reiterating your points in brief;
- Permit the opponent counsel uninterruptedly. However, if facts are being completely twisted, interrupt depending upon the relevant circumstances and that too only with the permission of the Court / Tribunal;
- Take instructions from client in advance with respect to alternative reliefs.

As Regards Advocacy

Advocacy is the presentation of logical facts of any dispute in a right perspective. It employs the noblest faculties of the human mind by differentiating between right and wrong, just and unjust, equitable and inequitable. This could be done only by applying the knowledge of law acquired by extensive and intensive learning. Company Secretaries should be able to formulate and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner. They should understand the crucial importance of preparation and the best way to undertake it and be able to demonstrate an understanding of the basic skills in the presentation of cases before the tribunals. They should be able to:

- Identify the client's goals and should continue to enjoy the confidence of his client;
- Identify and analyse factual material;
- Identify the legal context in which the factual issue arises;
- Relate the central legal and factual issues to each other;
- State in summary from the strengths and weaknesses of the case from each party's perspective;
- Develop a presentation strategy;
- Outline the facts in simple narrative form;

- Structure and present in simple form the legal framework of the case;
- Structure the submission as a series of propositions based on the evidence;
- Identify, analyse and assess the specific communication skills and techniques;
- Demonstrate an understanding of the purpose, techniques and tactics of examination, cross-examination and re-examination to adduce, rebut and clarify evidence;
- Demonstrate an understanding of the professional ethics, etiquette and conventions of advocacy.

CONDUCT AND ETIQUETTE

Duty to the Court/Tribunal

(i) A Company Secretary shall, during the presentation of his case and while otherwise acting before a Court/ Tribunal, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.

(ii) A Company Secretary shall maintain towards the Courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community and legal system.

(iii) A Company Secretary shall not influence the decision of a Court by any illegal or improper means. Private communications with the judge relating to a pending case are forbidden.

(iv) A Company Secretary shall use his best efforts to restrain and prevent his client from resorting to sharp and unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the Company Secretary himself ought not to do. A Company Secretary shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court.

(v) A Company Secretary shall not enter appearance, act, plead or practice in any way before a Court/ Tribunal or any other Authority, if the sole or any member thereof is related to the Company Secretary.

(vi) A Company Secretary shall not appear in or before any Court or Tribunal or any other Authority for or against an organization or an institution, society or corporation, if he is a member of the Executive Committee of such organization or institution or society or corporation.

(vii) A Company Secretary should not act or plead in any matter in which he is himself pecuniarily interested.

Duty to Client

(i) A Company Secretary shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client.

(ii) A Company Secretary shall not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear if he can retire without jeopardizing his client's interest.

(iii) A Company Secretary shall at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgment in either him or continuing the engagement.

(iv) It shall be the duty of a Company Secretary to fearlessly uphold the interest of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.

(v) A Company Secretary shall not at any time, be a party to fomenting of litigation. A Company Secretary shall not act on the instructions of any person other than his client or his authorized agent.

(vi) A Company Secretary shall not do anything whereby be abuses or takes advantage of the confidence reposed in him by his client.

(vii) Avoid the interruption to the Client.

(viii) To be prompt, Orderly and systematic.

(ix) Advice, inform and arrange the interim relief for the protection of subject matter of the case.

(x) Ensure that the execution of the decision has been made.

Duty to Opponent

(i) A Company Secretary shall not in any way communicate or negotiate upon the subject-matter of controversy with any party represented by an Advocate except through that Advocate.

(ii) A Company Secretary shall do his best to carry out the legitimate promise/ promises, made to the opposite- party.

IMPORTANT PRINCIPLES OF ADVOCACY

Some of the important principles of advocacy a Company Secretary should observe include:

1. Act in the best interest of the client;
2. Act in accordance with the client’s wishes and instructions;
3. Keep the client properly informed;
4. Carry out instructions with diligence and competence;
5. Act impartially and offer frank, independent advice;
6. Maintain client confidentiality.
7. Keep a track of the status of the case and take follow up whenever necessary. This can ensure the timely completion of the case.
8. Understand the requirements of the procedure before the tribunal.

ADVOCACY TIPS

Some of the tips given by legal experts which professionals like Company Secretaries should bear in mind while appearing before Tribunals or other quasi-judicial bodies are given herein below. They say while pleading, a judge in your pleadings looks for:

(i) ***Clarity:*** The judge’s time is limited, so make the most of it.

(ii) ***Credibility:*** The judge needs to believe that what you are saying is true and that you are on the right side.

(iii) ***Demeanour:*** We do not have a phrase “hearing is believing”. Humans which includes the human judge, is far more video than audio. The way we collect most of our information is through our eyesight.

(iv) ***Eye contact:*** While pleading, maintain eye contact with your judge.

(v) ***Voice modulation:*** Voice modulation is equally important. Modulating your voice allows you to emphasize the points you want to emphasize. Be very careful about raising your voice. Use your anger strategically. But use is rarely. Always be in control of it.

(vi) **Confident temperament and precise communication:** The appearance of a confident company secretary can be helpful for him to present his case. Precise communication will make the judges to listen carefully.

(vii) ***Psychology:*** Understand judge's psychology as your job is to make the judge prefer your version of the truth.

(viii) ***Be likeable:*** At least be more likeable than your opponent. If you can convert an unfamiliar Bench into a group of people who are sympathetic to you personally, you perform a wonderful service to your client.

(ix) ***Learn to listen:*** *Entertain your judge.* Humour will often bail you out of a tough spot.

(x) ***Knowledge and Preparation:*** Knowledge of the subject matter and proper preparation of the case is of utmost importance and comes before any other skill a professional can have for winning a case.

(xi) ***Order sheet:*** Order sheet are maintained in every proceedings by the Court Master and shall contain all orders passed by the Appellate Tribunal from time to time. A Professional should keep track of the Order Sheets and try to obtain if allowed by the rules pertaining to the proceedings.

APPEARANCE ETIQUETTES

Arguments on Preliminary Submissions

Preliminary submissions should primarily confine to the true and correct facts regarding the issue involved and which have been suppressed or not disclosed by the other side in the pleadings. Additionally the provisions of law or legal objections relevant and applicable to the issues involved in the matter should also be mentioned so as to demonstrate that the relief being claimed by the opponent is not eligible to be granted and/or that the relief being claimed by the party being represented by a lawyer/authorized representative should ordinarily be allowed as per those provisions of law. Before incorporating such facts and/or provisions of law in the write-up, an authorized representative should be thorough with the provisions of law and interpretation, thereof, based upon relevant judgments so as to ensure that the submissions being made on behalf of the client are accepted and upheld by the Presiding Officer/Court/Tribunal as the case may be. Thus, for eg., if a claim being opposed by an authorized representative is evidently barred by limitation, such an objection should be taken in the preliminary submissions/objections. Such type of submissions/objections should be duly supported by law on the point or by relevant case law/judgments.

Arguments on Merits

Such arguments as relate to the facts pleaded by the parties are termed as arguments on merits. While addressing arguments on merits, an authorized representative should carefully point out the pleadings of the parties and the relevant evidence in support thereof, lead by the parties, both oral as well as documentary. An authorized representative should ensure that all or any contradiction in the pleadings of the opponent and the evidence in support of such pleadings are duly pointed out while submitting his/her arguments. Thus, where an agreement/contract of service is pleaded and there is no evidence either oral or documentary on record in support of such an agreement/contract, it should be specifically pointed out that the opponent has failed to prove/establish that such an agreement/contract actually exists or that the same had actually been executed at all. Similarly, where notice is alleged to have been served prior to filing of the case and there is no documentary evidence like postal receipt/courier receipt placed on record by the opponent, it should be pointed out that the opponent has failed to establish that the notice had actually been served. Furthermore, the relevant facts and/ or contradictions extracted from the opponent or his/her witness during the course of cross-examination and relating to the factual issues involved in the matter, should be highlighted so as to draw attention of the Court/ Tribunal towards such facts/contradictions.

Closing Argument

Closing arguments are very important stage for a hearing. It requires a professional to present before the tribunal what he intends a tribunal to decide. Effective closing arguments can turn the case around in case of doubts in the minds of the members of the tribunal. Therefore, closing arguments should be made with extra caution and preparation.

Other Important Points

1. Make a note of all important points and ensure the coverage of all the points during the hearing. Additional notes of the arguments of the other Party's professional can also be supportive.
2. Keep sufficient copies of the material you want the tribunal to reply such as copy of the Act, Cases, reference books etc.
3. Understand the intention of the client for filling the case and act according to the extent possible.
4. Take the advice from the client with respect to all the possible reliefs he may agree.
5. Keep the record of all the hearings he/she is handling and maintain a diary so that no case hearing is missed by mistake.

PRE-REQUISITES FOR ENTERING APPEARANCE

Legal Pleadings/Written Submissions

As already pointed out above, legal pleadings/submissions should be taken under the heading "preliminary submissions/objections". While taking such plea one should ensure that the legal provisions and/or interpretation, thereof, is very clear and directly applicable to the issues involved in the matter. Thus, where an unregistered agreement/contract forms the basis of a claim set up by a party and such an agreement/ contract compulsorily requires registration under Section 17 of the Registration Act, a legal plea should be taken that since the agreement/contract is not a registered document, the same could not be looked into or relied upon by the Court for the reasons that the same cannot be read in evidence. Similarly, all other legal submissions which go to the root of the controversy and which are sufficient as well as material for adjudication of the issues involved, should be taken in opposition to the claims put forth by the opponent. Some illustrations are as under:

(i) Suit is not maintainable for want of statutory notice etc.

(ii) Plaint does not disclose cause of action.

(iii) Plaintiff has no right to sue.

(iv) Suit barred by principles of res-judicata.

(v) Suit barred by principles of waiver, estoppel, acquiescence.

(vi) Suit is barred by special enactment.

(vii) Court has no jurisdiction.

(viii) Suit is barred by limitation.

(ix) Suit is premature, and so on.

Some of these are known technically as ‘special defences’. In a suit based on contract, defendant may admit that he made the contract, but may avoid the effect of admission by pleading performance, fraud, release, limitation etc.

Rule of Adverse Inference

No evidence is required of matters which are, either formally admitted for the purposes of the trial, in civil cases, by the pleadings, by answer to interrogatories, by agreement or otherwise and in criminal cases, as regards proof of those documents admitted under Section 294 of the Code of Criminal Procedure, 1973.

It is incumbent upon a party in possession of best evidence on the issue involved, to produce such evidence and if such party fails to produce the same, an adverse inference is liable to be drawn against such party. The Court will be justified in drawing an adverse inference against that party. [*Ms. Shefali Bhargava v. Indraprastha Appollo Hospital & Anr., 2003 NCJ 787 (NC)*].

It is equally incumbent upon a party to produce evidence of some expert where the issue involved is a complex or difficult one as for instance, issues pertaining to engineering, medical, technology or science etc. Since the court cannot constitute itself into an expert body and contradict the claim/proposition on record unless there is something contrary on the record by way of expert opinion or there is any significantly acclaimed publication or treatise on which reliance could be based. [*Dr. Harkanwaljit Singh Saini v. Gurbax Singh & Anr., 2003 NCJ 800 (NC)*].

Understanding the Jurisdiction of the Tribunal

A case filled without understanding the jurisdiction of the tribunal can only waste the time of a Practising company secretary, client and also the tribunal. Therefore, it is of paramount importance to understand the jurisdiction of the tribunal before filling any matter. Filling a case with the tribunal not having jurisdiction can also degrade the value of a professional before the client and he may perceice the professional as less knowledgeable professional. It can impact the future opportunities that can come to a Professional.

Prepare Approach/Plan

A Professional should prepare an outline plan for which he should further strive. The plan can help a professional move in a direction. After a plan, it will be easy for a professional to take the case forward effectively.

DRESS CODE

In professional life it is important to look presentable because personal appearance counts. How you look can be a major factor in how you are perceived by others. How you look, talk, act and work determines whether you are a professional or an amateur. The way you dress, speaks volumes about who you are as a person and as a professional. Whenever you enter a room for the first time, it takes only a few seconds for people you have never met to form perceptions about you and your abilities. Your clothes and body language always speak first. So it is important that your image gives people the right impression.

Some of the perceptions people can form solely from your appearance are: your professionalism; your level of sophistication; your intelligence and your credibility. Whether these perceptions are real or imagined, they underscore how your appearance instantly influences the opinions of strangers, peers, and superiors. Being well dressed in a corporate setting can influence not just perceptions, but also promotions.

A dress code is a set of rules governing a certain combination of clothing. Apart from the legal profession, professional dress code standards are established in major business organizations and these have become more relaxed in recent decades. Dress codes vary greatly from company to company, as different working environments demand different styles of attire. Even within companies, dress codes can vary among positions.

Getting dressed for work is to project a professional and competent image. It has been observed that the professionals who do not take the time to maintain a professional appearance or those who have never learned how to dress properly for their chosen field of work, are not being taken seriously by co-workers and present the image of not being able to perform satisfactorily on the job.

ICSI (GUIDELINES FOR ATTIRE AND CONDUCT OF COMPANY SECRETARIES), 2020

Introduction

(i) Attire reflects personality, lifestyle and standardization of a professional more so when he appears before various statutory bodies, authorities, adjudicators, government agencies/bodies and quasi-judicial forums.

(ii) The recognition of Company Secretaries to appear before statutory bodies, authorities, adjudicators, government agencies/bodies and quasi-judicial bodies on behalf of their clients is a privilege coupled with conditions. One such condition is to dress appropriately, support the Forum's authority and dignity and maintain decorum.

(iii) The dressing requirements for appearing before statutory bodies and quasi-judicial bodies are unwritten. A Company Secretary appearing before any statutory body or quasi-judicial body on behalf of his clients stands there in his capacity as a Professional. He is duty bound to respectfully support the presiding authorities not just by following the rules and procedures but also by demonstrating the highest standards of professional etiquettes as expected from a company secretary.

Objective

The objective of issuing these Guidelines is to: -

a) Provide standards of etiquette and decorum for appearing before courts, quasijudicial bodies, statutory authorities and other government agencies/bodies, including but not limited to ROC, OL, RD, NCLT, NCLAT, NGT, RBI, SEBI, CCI, Income Tax Department, GST Department, Stock Exchanges or any other Offices of Regulators/Registrars under different laws.

b) Ensure to demonstrate professional behaviour and respect towards the authority and to maintain dignity of the profession of Company Secretaries.

c) Guide Company Secretaries as to which attire is considered unsuitable, unconventional or inappropriate for them.

d) Project a professional image amongst the stakeholders including Regulators and build a brand for the profession of Company Secretaries.

Applicability

(i) These Guidelines shall apply to Company Secretaries whether in Employment or in Practice appearing before the quasi-judicial bodies, statutory authorities and other government agencies/bodies including but not limited to ROC, OL, RD, NCLT, NCLAT, NGT, RBI, SEBI, CCI, Income Tax Department, GST Department, Stock Exchanges and any other Offices of Regulators/Registrars under different laws on behalf of their employer/ clients.

(ii) Endeavour shall be made by Company Secretary in Practice to follow these guidelines for appearing before all clients as well.

Dress Code

A. The dress code to be adhered to by the Company Secretaries in Practice is as under:

A.1 For Male Members:

a. Navy Blue Suit (Coat & Trouser, plain/solid coloured)

OR

Navy Blue Blazer over a sober plain/solid coloured Trouser preferably light grey. The fabric of the coat/blazer may be as per the weather.

b. Navy Blue Neck Tie preferably with CS logo or any other tie with CS Logo.

c. Buttoned up Coat

d. White full sleeve collared Shirt

e. Formal Shoes

f. The socks may be of any plain/solid colour preferably matching with the colour of Trousers.

A.2 For Female Members:

a. Navy Blue suit (Coat & Trouser, plain/solid coloured), with White full sleeve collared Shirt

b. Saree /suit of sober colour with Navy Blue Blazer

c. Formal footwear

d. Scarf with CS Logo is recommended to be worn.

B. Restricted items of attire

B.1 The following items of attire shall not be worn in any case:

a. Clothes that are too revealing or not fitting well.

b. Short or skirts or half sleeves shirt.

c. Sunglasses, Caps, Hats, mufflers.

d. Hand Gloves.

e. Face Masks and veils (except when worn for medical reasons/precautions).

f. Sports shoes, slippers, casual footwear.

g. Singlets, T-shirts, Jeans.

h. Medallions, except where the professional has a constitutional right thereto.

i. Medical equipment which would force the trial judge to either grant a continuance or influence the judge in any manner prejudicial to the administration of justice.

j. Earphones, headphones and any other electronic communication equipment.

C. Exceptions

C.1 The intent of these guidelines is not to impose rigid standards not directly related to judicial administration and accordingly, exceptions are given for the following:

a. Turbans, may be worn for religious, cosmetic or other legitimate purposes in plain/solid sober colours.

b. Head gear, adhering to good sense of community standards and having a balance with professional's attire may be worn.

c. Hearing aids, so that a person with hearing loss can listen, communicate, and participate more fully in daily activities.

For the Members in Employment the abovementioned para shall apply mutatis mutandis with an exception that where the member in employment is covered under the dress code prescribed by the employer, the same shall apply.

Wherever the quasi-judicial bodies, statutory authorities and other government agencies/bodies referred above have defined a particular dress code for appearing before them, in the courtroom / or otherwise, the same shall be adhered to.

Etiquettes while Attending Virtual Hearings

All members shall endeavour to adhere to the following additionally, in case of virtual hearing or E-hearing:

a) Before the hearing, familiarize yourself with your microphone, camera and speakers, test your technology from the place where you plan to participate in the hearing.

b) Dress code as mentioned in above paras should be adhered too.

c) Excessive physical movements should be avoided.

d) Computer or camera angle should be placed in such manner that is straight at or a bit above eye level.

e) Overly bright or extremely dark background should be avoided as they do not translate well on camera. Additionally, background should be clear and uncluttered.

f) While using spectacles/glasses they should have non-reflective coating.

g) Use an external microphone, a headset or earbuds with a built-in microphone, where possible-this supports good audio quality and helps other participants to hear you clearly. Mute your microphone when not speaking. This reduces echo and background noise.

h) Preferably, mute notifications on your computer/device.

Consequences of Violation

Any non-compliance with these Guidelines shall render the member liable for action under the Company Secretaries Act, 1980 read with First Schedule and Second Schedule to the Company Secretaries Act, 1980.

LESSON ROUND-UP

- The corporate sector has recognized the role of the Company Secretaries as a compliance officer and as a nodal point of contact between the company and its shareholders, debenture holders, depositors, financial institutions and the Government. The Company Secretaries in practice are rendering value added services to corporate sector as independent professionals.
- Effective oral pleadings are relevant both at the stage of preparation of the case before actual presentation and also at the stage of actual presenting a case before NCLT or other tribunals.
- Preliminary submissions should primarily confine to the true and correct facts regarding the issue involved and which have been suppressed or not disclosed by the other side in the pleadings.
- Practicing good professional etiquette is necessary for professional success in the emerging business scenario which is constantly changing and making the market place more competitive and contestable.

- To enhance the visibility and brand building of the profession and ensuring uniformity, the Council of the Institute of Company Secretaries of India has prescribed guidelines for professional dress for members while appearing before judicial/quasi-judicial bodies and tribunals.
- There are certain basic preparatory points which a Company Secretary should bear in mind when contacted by a client.
- How you look can be a major factor in how you are perceived by others. How you look, talk, act and work determines whether you are a professional or an amateur.
- Company Secretaries should be able to formulate and present a coherent submission based upon facts, general principles and legal authority in a structured, concise and persuasive manner. They should understand the crucial importance of preparation and the best way to undertake it.

GLOSSARY

Court Craft- For winning a case, art of advocacy is important which in essence means to convince the judge and others that my position in the case is the proper interpretation.

Arguments on Preliminary Submissions- The arguments which are primarily confine to the true and correct facts regarding the issue involved and which have been suppressed or not disclosed by the other side in the pleadings.

Arguments on merits- Such arguments as relate to the facts pleaded by the parties are termed as arguments on merits.

Rule of Adverse Inference- No evidence is required of matters which are, either formally admitted for the purposes of the trial, in civil cases, by the pleadings, by answer to interrogatories, by agreement or otherwise and in criminal cases, as regards proof of those documents admitted.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Explain Dressing, Handshake and Communication Etiquettes.
2. Writes Short notes on:
    a) Court Craft
    b) Oral Pleadings.
3. Explain the duties of Company Secretary during the presentation towards Court and Client.
4. What is meant by etiquette? Why practicing good professional etiquette is necessary for professional success?
5. What are the Pre-Requisites for entering into appearance before Court/Tribunal?
6. Explain the important considerations while drafting Affidavit in Evidence.

LIST OF FURTHER READINGS

- Chartered Secretary, The ICSI
- Articles written by professionals

OTHER REFERENCES (Including Websites/Video Links)

- https://www.icsi.edu/home/cs/
- http://www.ukca.in/wp-content/uploads/2020/02/Advocacy-Skills.pdf

Applications, Petitions and Appeals under Companies Act, 2013

Lesson 12

KEY CONCEPTS

■ Caveat ■ Interlocutory application ■ Amicus Curiae ■ Appeal ■ Principle of Corporate democracy ■ Public Interest Litigation ■ Compounding ■ Sufficient Cause

Learning Objectives

To understand:

- Rules of NCLT and NCLAT applicable to proceedings
- Filling of Appeal to NCLT against notice of rejection to transfer shares
- Submitting application for calling the AGM and other meetings to NCLT for their direction
- Drafting of Petition for Compromise and Arrangements including mergers and amalgamations
- Drafting of Petition in case of Oppression and Mismanagement
- Drafting of Petition for class actions
- Preparing Compounding Application
- Adjudication and E-Adjudication before authorities under Companies Act, 2013
- Winding up Petition
- Filling Appeals before NCLAT

Lesson Outline

- Introduction
- NCLT Rules
- NCLAT Rules
- Appearances - some do's and don'ts
- Appeal to NCLT against notice of Refusal to Transfer Shares
- Application to NCLT for direction for calling the AGM and other meetings
- Application for Compromise and Arrangements including Mergers and Amalgamations
- Application in case Oppression and Mismanagement & Class Actions
- Application for Compounding
- Adjudication and E-adjudication
- Petition for Winding up
- Appeal before NCLAT
- Case Studies
- E-filing of documents before NCLT & NCLAT
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites/video links)

REGULATORY FRAMEWORK

- The Companies Act, 2013
- NCLT & NCLAT Rules
- Limitation Act, 1963.
- Companies Act, 1956
- Civil Procedure Code, 1908

INTRODUCTION

The Ministry of Corporate Affairs has notified the constitution of NCLT and NCLAT with effect from June 01, 2016. Consolidating the jurisdiction of Company Law Board, High Court and BIFR into a single forum i.e. NCLT, dedicated to Corporate matters, will remove the multi-fold governance. In the first phase, the Ministry of Corporate Affairs has notified the provisions of Companies Act, 2013 where the powers of Company Law Board stood transferred to NCLT and the Company Law Board is dissolved. Many provisions under which new powers are conferred on NCLT have also been notified. These include provisions relating to conversion of public company into private company, composition of offences, power of tribunal to call for an Annual General Meetings, provisions pertaining deposits, class action suits and so on.

The Eradi Committee recommended that the jurisdiction, power and authority relating to winding up of companies should be vested in a National Company Law Tribunal instead of the High Court as at present.

This Lesson covers Applications, Petitions and Appeals under the Companies Act, 2013 before NCLT and NCLAT and also to authority under the Companies Act, 2013 such as Regional Director and Registrar of Companies.

NCLT RULES

Important NCLT Rules are provided as follows:

Procedure before NCLT (Rule 20)

1. **Formats:** Every appeal or petition or application or caveat petition or objection or counter presented to the NCLT shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeter width on top and with a right margin of 2.5. cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form.
2. **Cause Title:** The cause title shall state "Before the National Company Law Tribunal" and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred.
3. **Paragraphed:** Appeal or petition or application or counter or objections shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.
4. **Date:** Where Saka or other dates are used, corresponding dates of Gregorian Calendar shall also be given.
5. **Description of Parties:** Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated in the subsequent proceedings in the same appeal or petition or application.
6. **Numbering of Parties:** The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party.

These numbers shall not be changed and in the event of the death of a party during the pendency of the appeal or petition or matter, his Legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers.

Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.

7. **Mention of the provision of Law** Every proceeding shall state immediately after the cause title the provision of law under which it is preferred.

Particulars to be set out in the address for service(Rule 21)

The address for service of summons shall be filed with every appeal or petition or application or caveat on behalf of a party and shall as far as possible contain the following items namely:

(a) the name of the road, street, lane and Municipal Division or Ward, Municipal Door and other number of the house;

(b) the name of the town or village;

(c) the post office, postal district and PIN Code; and

(d) any other particulars necessary to locate and identify the addressee such as fax number, mobile number, valid e-mail address, if any.

Initialling alteration (Rule 22)

Every interlineations, eraser or correction or deletion in any appeal or petition or application or document shall be initialled by the party or his authorised representative presenting it.

Presentation of petition or appeal (Rule 23)

1. **Presentation in triplicate:** Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.
2. **Verification:** Every petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition or application or appeal duly verified from the originals.
3. **Document with Index:** All the documents filed in NCLT shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.
4. **Copies for other parties:** Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed under these rules.
5. **Serving copies:** In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorised representative.
6. **Processing Fee:** The processing fee prescribed by these rules, with required number of envelopes of sufficient size and notice forms shall be filled alongwith memorandum or appeal.

Presentation of joint petition (Rule 23A)

The NCLT Bench may permit more than one person to join together and present a single petition if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that they have a common interest in the matter.

Such permission shall be granted where the joining of the petitioners by a single petition is specifically permitted by the Act.

Number of copies to be filed(Rule 24)

The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or petition or application or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

Number of Copies	
3 Copies to the NCLT	1 Copy to each party

Lodging of Caveat (Rule 25)

Any person may lodge a caveat in triplicate in any appeal or petition or application that may be instituted before NCLT by paying the prescribed fee after forwarding a copy by registered post or serving the same on the expected petitioner or appellant and the caveat shall be in the "Form No. NCLT 3C" and contain such details and particulars or orders or directions, details of authority against whose orders or directions the appeal or petition or application is being instituted by the expected appellant or petitioner or applicant which full address for service on other side, so that the appeal or petition or application could be served before the appeal or petition or interim application is taken up.

Provided, that NCLT may pass interim orders in case of urgency.

The caveat shall remain valid for a period of ninety days from the date of its filing.

Endorsement and Verification (Rule 26)

1. At the foot of every petition or appeal or pleading there shall appear the name and signature of the authorised representative.
2. Every petition or appeal shall be signed and verified by the party concerned in the manner provided by these rules.

Translation of Document (Rule 27)

A document other than English language intended to be used in any proceeding before NCLT shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by authorised representative engaged on behalf of parties in the case or if the authorised representative engaged in the case authenticates such certificate or prepared by a translator approved for the purpose by the Registrar on payment of such charges as he may order.

Appeal or petition or other proceeding shall not be set down for hearing until and unless all parties confirm that all the documents filed on which they intend to rely are in English or have been translated into English and required number of copies are filed into NCLT.

Endorsement and scrutiny of petition or appeal or document (Rule 28)

The person in charge of the filing-counter shall immediately on receipt of petition or appeal or application or document affix the date stamp of NCLT thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.

lf, on scrutiny, the appeal or petition or application or document is found to be defective, such document shall, after notice to the party, to returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the pleading or document.

Registration of proceedings admitted (Rule 29)

On admission of appeal or petition or caveat or application, the same shall be numbered and registered in the appropriate register maintained in this behalf and its number shall be entered therein.

Calling for records (Rule 30)

On the admission of appeal or petition or application the Registrar shall, if so directed by NCLT, call for the records relating to the proceedings from any adjudicating authority and retransmit the same.

Production of authorisation for and on behalf of an association(Rule 31)

Where an appeal or application or petition or other proceeding purported to be instituted by or on behalf of an association, the person or persons who sign (s) or verify(ies) the same shall produce along with such application, for verification by the Registry, a true copy of the resolution of the association empowering such person(s) to do so.

Provided that the Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorization.

Provided further that it shall set out the list of members for whose benefit the proceedings are instituted.

Interlocutory applications (Rule 32)

Every Interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in prescribed form and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application.

General Procedure (Rule 34)

1. In a situation not provided for in these rules, NCLT may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice.
2. The general heading in all proceedings before NCLT, in all advertisements and notices shall be in Form No. NCLT. 4.
3. Every petition or application or reference shall be filed in form as provided in Form No. NCLT. 1 with attachments thereto accompanied by Form No NCLT.2 and in case of an interlocutory application, the same shall be filed in Form No. NCLT. 1 accompanied by such attachments thereto along with Form No NCLT. 3.
4. Every petition or application including interlocutory application shall be verified by an affidavit in Form No. NCLT.6. Notice to be issued by NCLT to the opposite party shall be in Form NCLT-5.

Advertisement detailing petition (Rule 35)

1. Where any application, petition or reference is required to be advertised, it shall, unless NCLT otherwise orders, or these rules otherwise provide, be advertised in Form NCLT-3A, not less than fourteen days before the date fixed for hearing, at least once in a vernacular newspaper in the principal vernacular

language of the district in which the registered office of the company is situate, and at least once in English language in an English newspaper circulating in that district.

2. Every such advertisement shall state;-
   (a) the date on which the application, petition or reference was presented;
   (b) the name and address of the applicant, petitioner and his authorised representative, if any;
   (c) the nature and substance of application, petition or reference;
   (d) the date fixed For hearing;
   (e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition or reference at the hearing shall send a notice of his intention to the concerned Bench and the petitioner or his authorised representative, if any, indicating the nature of interest and grounds of opposition so as to reach him not later than two days previous to the day fixed for hearing.
3. Where the advertisement is being given by the company, then the same may also be placed on the website of the company, if any.
4. An affidavit shall be filed to the Tribunal, not, less than three days before the date fixed for hearing, stating whether the petition has been advertised in accordance with this rule and whether the notices, if any, have been duly served upon the persons required to be served.

   Provided that the affidavit shall be accompanied with such proof of advertisement or of the service, as may be available.
5. Where the requirements of this rule or the direction of NCLT, as regards the advertisement and service of petition, are not complied with, NCLT may either dismiss the petition or give such further directions as it thinks fit.
6. NCLT may, if it thinks tit, and upon an application being made by the party, may dispense with any advertisement required to be published under this rule.

Notice to Opposite Party (Rule 37)

1. NCLT shall issue notice to the respondent to show cause against the application or petition on a date of hearing to be specified in the Notice. Such notice in Form No NCLT.5 shall be accompanied by a copy of the application with supporting documents.
2. If the respondent does not appear on the date specified in the notice in Form No. NCLT.5, NCLT, after according reasonable opportunity to the respondent, shall forthwith proceed *ex-parte* to dispose of the application.
3. If the respondent contests to the notice received under sub-rule (1), it may. either in person or through an authorised representative, file a reply accompanied with an affidavit and along with copies of such documents on which it relies, with an advance service to the petitioner or applicant, to the Registry before the date of hearing and such reply and copies of documents shall form part of the record.

Service of Notices and processes (Rule 38)

1. Any notice or process to be issued by NCLT may be served by post or by courier or at the e-mail address as provided in the petition or application or in the reply.
2. The notice or process if to be served physically may be served in any one of the following modes as may be directed by the Tribunal:

(a) by hand delivery through a process server or respective authorised representative;

(b) by registered post or speed post with acknowledgment due or by courier; or

(c) service by the party himself.

Explanation.-For the purposes of sub-rules (l) and (2), the term “courier” means a person or agency which delivers the document and provides proof of its delivery.

3. Where a notice issued by NCLT is served by the party himself by hand delivery, he shall file with the Registrar or such other person duly authorised by the Registrar in this behalf, the acknowledgment together with an affidavit of service and in case of service by registered post or by speed post, file with the Registrar, or such other person duly authorised by the Registrar in this behalf, an affidavit of service of notice alongwith the proof of delivery.

4. Notwithstanding anything contained in sub-rules (1} and (2), NCLT may after taking into account the number of respondents and their place of residence or work or service could not be effected in any manner and other circumstances, direct that notice of the petition or application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appears to the Tribunal just and convenient.

5. A notice or process may also be served on an authorised representative of the applicant or the respondent, as the case may be, in any proceeding or on any person authorised to accept a notice or a process, and such service on the authorised representative shall be deemed to be a proper service.

6. Where NCLT directs a service under sub-rule (4), such amount of charges, as may be determined by NCLT from time to time, but not exceeding the actual charges incurred in effecting the service, shall be deposited with the Registry of NCLT by the petitioner or applicant.

Multiple remedies (Rule 38A)

A petition shall be based upon a single cause of action and may seek one or more reliefs provided that the reliefs are consequential to one another.

Production of Evidence by Affidavit (Rule 39)

1. NCLT may direct the parties to give evidence, if any, by affidavit.

2. Notwithstanding anything contained in sub-rule (I), where NCLT considers it necessary in the interest of natural justice, it may order cross examination of any deponent on the points of conflict either through information and communication technology facilities such as video conferencing or otherwise as may be decided by NCLT, on an application moved by any party.

3. Every affidavit to be filed before the Tribunal shall be in Form No. NCLT.7.

Production of additional evidence before the Bench (Rule 40)

1. Notwithstanding anything contained in rule 39, the parties to the proceedings shall not be entitled to produce before the Bench additional evidence, either oral or documentary, which was in the possession or knowledge but was not produced before the Inspector, appointed by the Central Government for the purpose of investigating the affairs of the concerned company, during investigation under Chapter XIV of the Companies Act, 2013 but if the Bench requires any additional evidence or document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Inspector so appointed for the said purpose has not given sufficient opportunity to the party to adduce evidence, the Bench, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence in be produced.

2. Such document may be produced or such witness examined or such evidence adduced either before the Bench or before such authority as the Bench may direct.
3. If the document is directed to be produced or witness examined or evidence adduced before any authority, the party shall comply with the direction of the Bench and after compliance, send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Bench.
4. Additional evidence or document shall be made available by the Bench to the parties to the proceedings other than the party adducing the evidence and they shall be afforded an opportunity to rebut the contents of the said additional evidence.

Filing of Reply and other Documents by the Respondents (Rule 41)

1. Each respondent may file his reply to the petition or the application and copies of the documents, either in person or through an authorised representative, with the registry as specified by NCLT.
2. A copy of the reply or the application and the copies of other documents shall be forthwith served on the applicant by the respondent.
3. To the reply or documents filed under sub-rule (1), the respondent shall specifically admit, deny or rebut the facts stated by the applicant in his petition or application and state such additional facts as may be found necessary in his reply.

Filing of Rejoinder (Rule 42)

Where the respondent states such additional facts as may be necessary for the just decision of the case, the Bench may allow the petitioner to file a rejoinder to the reply filed by the respondent, with an advance copy to be served upon the respondent.

Power of the Bench to call for further information or evidence (Rule 43)

1. The Bench may before passing orders on the petition or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary-
   (a) for the purpose of satisfying itself as to the truth of the allegations made in the petition or application; or
   (b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.
2. Without prejudice to sub-rule(1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, written communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.
3. Where any party preferring or contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it shall be at liberty to move an appropriate application for forensic examination and the Bench hearing the matter may, for reasons to be recorded, either allow the application and send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records, or dismiss such application.

Hearing of petition or applications (Rule 44)

1. NCLT shall notify to the parties the date and place of hearing of the petition or application in such manner as the President or a Member may, by general or special order, direct.

2. Where at any stage prior to the hearing of the petition or application, the applicant desires to withdraw his petition or application, he shall make an application to that effect to NCLT, and NCLT on hearing the applicant and if necessary, such other party arrayed as opposite parties in the petition or the application or otherwise, may permit such withdrawal upon imposing such costs as it may deem fit and proper for NCLT in the interests of the justice.

Rights of a party to appear before NCLT (Rule 45)

(1) Every party may appear before NCLT in person or through an authorised representative, duly authorised in writing in this behalf.

(2) The authorised representative shall make an appearance through the filing of Vakalatnama or Memorandum of Appearance in Form No. NCLT. 12 representing the respective parties to the proceedings.

(3) The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an advocate to represent in the proceedings before NCLT.

(4) The officer authorised by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator shall be an officer not below the rank of Junior Time Scale or company prosecutor.

(5) During any proceedings before NCLT, it may for the purpose of its knowledge, call upon the Registrar of Companies to submit information on the affairs of the company on the basis of information available in the MCA21 portal, Reasons for such directions shall be recorded in writing.

(6) There shall be no audio or video recording of the Bench proceedings by the parties or their authorised representatives.

Consequence of non-appearance of applicant (Rule 48)

1. Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, NCLT may, in its discretion, either dismiss the application for default or hear and decide it on merit.
2. Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies NCLT that there was sufficient cause for his non-appearance when the petition or the application was called for hearing, NCLT shall make an order restoring the same.

Provided that where the case was disposed of on merits the decision shall not be re-opened.

Ex-parte Hearing and disposal (Rule 49)

1. Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, NCLT may adjourn the hearing or hear and decide the petition or the application *ex-parte*.
2. Where a petition or an application has been heard *ex-parte* against a respondent or respondents, such respondent or respondents may apply to NCLT for an order to set it aside and if such respondent or respondents satisfies NCLT that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing when the petition or the application was called for hearing, NCLT may make an order setting aside the *ex-parte* hearing as against him or them upon such terms as it thinks fit.

Provided that where the *ex-parte* hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only it may be set aside as against all or any of the other respondents also.

Registry to send certified copy (Rule 50)

The Registry shall send a certified copy of final order passed to the parties concerned free of cost and the certified copies may be made available with cost as per Schedule of fees, in all other cases.

Power to regulate the procedure (Rule 51)

NCLT may regulate its own procedure in accordance with the rules of natural justice and equity, for the purpose of discharging its functions under the Companies Act, 2013.

Summoning of witnesses and recording Evidence (Rule 52)

1. If a petition or an application is presented by any party to the proceedings for summoning of witnesses, NCLT shall issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for the just decision of the case.
2. Where summons are issued by NCLT under sub-rule (1) to any witness to give evidence or to produce any document, the person so summoned shall be entitled to such travelling and daily allowance sufficient to defray the travelling and other expenses as may be determined by the Registrar which shall be deposited by the party as decided by the Registrar.

Substitution of legal representatives (Rule 53)

1. Where a party to a proceeding pending before a Bench dies or is adjudged insolvent or, in the case of a company, being wound up, the proceeding shall not abate and may be continued by or against the executor, administrator or other legal representative of the parties or by or against the assignee, receiver or liquidator, as the case may be.
2. In the case of death of a party during the pendency of the proceedings before NCLT, the legal representative of the deceased party may apply within ninety days of the date of such death for being brought on record.
3. Where no petition or application is received from the legal representatives within the period specified in sub-rule (2), the proceedings shall abate:

   Provided that for good and sufficient reasons shown, NCLT may allow substitution of the legal representatives of the deceased at any time before disposing the petition on merits.

Pleadings before NCLT (Rule 55)

No pleadings, subsequent to the reply, shall be presented except by the leave of the Tribunal upon such terms as the Tribunal may think fit.

Application for execution (Rule 56)

For execution of order passed by NCLT, the holder of an order shall make an application to NCLT in Form NCLT.8.

Effect of non-compliance (Rule 58)

Failure to comply with any requirement of these rules shall not invalidate any proceeding, merely by reason of such failure, unless the Tribunal is of the view that such failure has resulted in miscarriage of justice

Amicus Curiae (Rule 61)

1. NCLT may, as its discretion, permit any person or persons, including the professionals and professional bodies to render or to communicate views to NCLT as amicus curiae on any point or points or legal issues as the case may be as assigned to such amicus curiae.
2. NCLT may permit amicus curiae to have access to the pleadings of the parties and NCLT shall enable the parties to submit timely observations on brief provided by the amicus curiae.
3. NCLT shall be at liberty to direct either of the parties or both the parties to the proceedings involving a point on which the opinion of the amicus curiae has been sought, to bear such expenses or fee as may be ordered by NCLT.
4. The judgment and any appended opinions shall be transmitted to the parties and to amicus curiae.

Presentation and scrutiny of petitions or applications (Rule 63)

In case of the scrutiny of the petitions or applications as provided in Part III and elsewhere in these rules, if any person is aggrieved of the decision of the Registrar or such other officer officiating as the Registrar of the Benches, an appeal against the order of the Registrar shall be made within fifteen days of the making of such order to the President of the Principal Bench and at other places to any Member of the Bench designated by the President, and whose decision thereon shall be final.

Application for calling or obtaining a direction to call annual general meeting (Rule 74)

1. An application under section 97 for calling or obtaining a direction to call the annual general meeting of the company shall be made by any member of the company in Form No. NCLT. 1 and shall be accompanied by the documents specified in Annexure B.
2. A copy of the application shall be served on the Registrar of Companies on or before the date of hearing.

Inspection of minute-books of general meeting (Rule 76)

Where any member has requested the company for inspection of minute-book of general meeting on payment of requisite fee and the company refused to give such inspection, he may apply to NCLT in Form No NCLT-9 for direction to the company for inspection of minute-book of general meeting.

Application under section 230 (Rule 80A)

An application under sub-section (12) of section 230 may be made in Form NCLT-1 and shall be - accompanied with such documents as are mentioned in Annexure B.

The following documents are mentioned in annexure B for above purpose:

1. Affidavit verifying the petition
2. Memorandum of appearance with copy of the Board's Resolution or the executed vakalatnama, as the case may be.
3. Documents in support of the grievance against the takeover.
4. Any other relevant document."

Application under section 241 (Rule 81)

1. An Application under clause (a). or clause (b) of sub-section (1) of section 241 of the Act, shall be filed in the Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.
2. Where an application is presented under section 241 on behalf of any members of a company entitled to apply under sub-section (1) of the said section, by any one or more of them, the letter of consent signed by the rest of the members so entitled authorising the applicant or the applicants to present the petition on their behalf, shall be annexed to the application, and the names and addresses of all the members on whose behalf the application is presented shall be set out in a schedule to the application, and where the company has a share capital, the application shall state whether the applicants have paid all calls and other sums due on their respective shares.
3. A copy of every application made under this rule shall be served on the company, other respondents and all such persons as NCLT may direct.

Withdrawal of Application filed under section 241 (Rule 82)

1. An application under clause (a) or clause (b) of sub-section (1) of section 241 of the Companies Act, 2013 shall not be withdrawn without the leave of NCLT.
2. An application for withdrawal under sub-rule (1) shall be filed in the Form NCLT-9.

Application under section 243 (Rule 83)

1. An application under clause (b) of sub-section (1) of section 243 of the Companies Act, 2013 for leave to any of the persons mentioned therein to be appointed or to act as the managing director or other director or manager of the company, shall be filed as per the appropriate Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.
2. An application under sub - rule (1) shall state whether a notice of intention to apply for such leave, as required under the proviso to sub-section (1) of section 243 of the Act, has been given to the Central Government and such application shall also be accompanied by a copy of such notice.
3. The notice of the date of hearing of the application together with a copy of the application shall be served on the Central Government not less than fifteen days before the date fixed for the hearing.

Application under sub-section (1) of section 244 (Rule 83A)

An application in Form No. NCLT. 9 may be filed before the Tribunal for waiver of requirement of clause (a) or (b) of Section 244 of the Act which shall be accompanied by such documents as mentioned in Annexure-B.".

Right to apply under section 245 (Rule 84)

1. An application under sub-section(1) of section 245, read with sub-section (3) of section 245 of the Act, shall be filled in Form NCLT-9.
2. A copy of every application under sub-rule (1) shall be served on the company, other respondents and all such persons as NCLT may direct.
3. In case of a company having a share capital, the requisite number of member or members to file an application under section 245(1) shall be -
    (i) (a) at least five per cent. of the total number of members of the company; or

    (b) one hundred members of the company,

    whichever is less; or

(ii) (a) member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company;

(b) member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.

(4) The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be -

(i) (a) at least five per cent. of the total number of depositors of the company; or

(b) one hundred depositors of the company,

whichever is less; or;

(ii) depositor or depositors to whom the company owes five per cent. of total deposits of the company.

Conducting a class action suit (Rule 85)

1. Without prejudice to the generality of the provisions of sub-section (4) of section 245 of the Companies Act, 2013 NCLT may while considering the admissibility of an application under the said section, in addition to the grounds specified therein, take into account the following:

   (a) whether the class has so many members that joining them individually would be impractical, making a class action desirable;

   (b) whether there are questions of law or fact common to the class;

   (c) whether the claims or defences of the representative parties are typical of the claims or defences of the class;

   (d) whether the representative parties will fairly and adequately protect the interests of the class.

2. For the purposes of clause(c) of sub-section (4) of section 245, while considering the desirability of an individual or separate action as opposed to a class action, NCLT may take into account, in particular, whether admitting separate actions by member or members or depositor or depositors would create a risk of:-

   (a) inconsistent or varying adjudications in such separate actions; or

   (b) adjudications that, as a practical matter, would be dispositive of the interests of the other members;

   (c) adjudications which would substantially impair or impede the ability of other members of the class to protect their interests.

Rule of opt-out (Rule 86)

1. A member of a class action under section 245 of the Companies Act, 2013 is entitled to opt-out of the proceedings at any time after the institution of the class action, with the permission of NCLT, as per Form No. NCLT - 1.

2. For the purposes of this rule, a class member who receives a notice under clause (a) of sub section (5) of section 245 of the Companies Act, 2013 shall be deemed to be the member of a class, unless he expressly opts out of the proceedings, as per the requirements of the notice issued by NCLT in accordance with rule 38.

3. A class member opting out shall not be precluded from pursuing a claim against the company on an individual basis under any other law, where a remedy may be available, subject to any conditions imposed by NCLT.

Publication of notice (Rule 87)

1. For the purposes of section 245(5)(a) of the Companies Act, 2013 on the admission of an application filed under section 245(1) of the Companies Act, 2013 a public notice shall be issued by NCLT as per Form No NCLT-13 to all the members of the class by-

   (a) publishing the same within seven days of admission of the application by NCLT at least once in a vernacular newspaper in the principal vernacular language of the State in which the registered office of the company is situated and at least once in English in an English newspaper that is in circulation in that State;

   (b) requiring the company to place the public notice on the website of such company, if any, in addition to publication of such public notice in newspaper under sub-clause (a):

   Provided that such notice shall also be placed on the websites of NCLT and the Ministry of Corporate Affairs, the concerned Registrar of Companies and in respect of a listed company on the website of the concerned stock exchange where the company has any of its securities listed, until the application is disposed of by NCLT.

2. The date of issue of the newspaper in which such notice appears shall be considered as the date of serving the public notice to all the members of the class.

3. The public notice shall, *inter alia*, contain the following-

   (a) name of the lead applicant;

   (b) brief particulars of the grounds of application;

   (c) relief sought by such application;

   (d) statement to the effect that application has been made by the requisite number of members/ depositors;

   (e) statement to the effect that the application has been admitted by the Tribunal after considering the matters stated under sub-section (4) of section 245 and these rules and it is satisfied that the application may be admitted;

   (f) date and time of the hearing of the said application;

   (g) time within which any representation may be filed with the Tribunal on the application;

   (h) the details of the admission of the application and the date by which the form of opt out has to be completed and sent as per Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure ‘B’, and such other particulars as the Tribunal thinks fit.

4. The cost or expenses connected with the publication of the public notice under this rule shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act in case order is passed in favour of the applicant.

Inspection of the records (Rule 114)

1. The parties to any case or their authorised representative may be allowed to inspect the record of the case by making an application in writing to the Registrar and by paying the fee prescribed thereof.

2. Subject to such terms and conditions as may be directed by the President by a general or special order, a person who is not a party to the proceeding, may also be allowed to inspect the proceedings after obtaining the permission of the Registrar in writing.

Inherent Powers (Rule 11)

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the NCLT to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

Power to exempt (Rule 14)

NCLT may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice.

Power to extend time (Rule 15)

NCLT may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.

NCLAT RULES

Many rules provided under NCLT rules are *mutatis mutandis* similar to the rules made under NCLAT Rules. However, other different rules of NCLAT are discussed hereunder:

Sitting of Appellate Tribunal (Rule 8)

NCLAT shall hold its sitting at its headquarters in New Delhi.

Presentation of appeal (Rule 22)

(1) Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every appeal shall be accompanied by a certified copy of the impugned order.

(3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.

(5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.

(6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.

Title of affidavits (Rule 67)

Every affidavit shall be titled as “Before the National Company Law Appellate Tribunal.” followed by the cause title of the application or other proceeding in which the affidavit is sought to be used.

Suo motu summoning of documents (Rule 74)

Notwithstanding anything contained in these rules, the NCLAT may, *suo motu*, issue summons for production of public document or other documents in the custody of a public officer in Form NCLAT-6.

Marking of documents (Rule 75)

1. The documents when produced shall be marked as follows:
    - (a) if relied upon by the appellant's or petitioner's side, they shall be numbered as'A' series.
    - (b) if relied upon by the respondent's side, they shall be marked as 'B' series.
    - (c) The Appellate Tribunal exhibits shall be marked as 'C' series,
2. NCLAT may direct the applicant to deposit with NCLAT by way of Demand Draft or Indian Postal Order drawn in favour of the pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi, a sum sufficient to defray the expenses for transmission of the records before the summons is issued.

Order (Rule 88)

The final decision of NCLAT on an appeal or proceedings before NCLAT shall be delivered by way of Judgment.

Operative portion of the order (Rule 89)

All orders or directions of the Bench shall be stated in clear and precise terms in the last paragraph of the order.

Placing of Supreme Court orders before NCLAT (Rule 101)

Whenever an interim or final order passed by the Supreme Court of India in an appeal or other proceeding preferred against a decision of NCLAT is received, the same shall forthwith be placed before the Chairperson or Members for information and kept in the relevant case file and immediate attention of the Registrar shall be drawn to the directions requiring compliance.

Filling through electronic media (Rule 103)

NCLAT may allow filing of appeal or proceedings through electronic mode such as online filing and provide for rectification of defects by e-mail or internet and in such filing, these rules shall be adopted as nearly as possible on and form a date to be notified separately and the Central Government may issue instructions in this behalf from time to time.

APPEARANCES – SOME DO'S AND DON'TS

Do's

- Ensure that the dress code is properly followed not only for company secretary in practice who is going to appear before NCLT but also, by a person accompanying him as an assistant.
- Carry all papers, documents, reference materials etc. If, possible carry extra copies of material, for submission to NCLT and the opponent. Reach at the place of hearing before time.
- Study the case thoroughly. Know the weak and strong points of the case.
- Prepare a list of points on which arguments would be addressed to the Court.
- Study the decided case laws.
- Wherever possible, study the cases decided by the member of NCLT in similar matters earlier. This will facilitate to know the mind of member of NCLT, how he decides or interprets situation, whether he is strict etc.
- Note down important dates, case citation and important event. If possible memorize the same. Even if everything is memorised keep one printed copy of summary. Always make photocopies of judgment relied upon by you. Also prepare paper book of those judgment and should be page numbered.

- Decide what you are going to speak before NCLT and what points to be covered and emphasized.
- One must be able to counter any matters or points raised by the members of the NCLT or opposite party. Since this situation will have to be dealt extempore for which you must be thorough about your client's case. If you are not well prepared for case, request for time to submit your representation in a short time.
- Prepare for eventualities like if judgment comes against your client, opposite party asking for adjournment etc.
- Maintain the decorum of the office of NCLT.
- Maintain your independent view.
- During the hearing, wherever possible make the atmosphere humorous & to appreciate the Court on any given opportunity for its dexterity.
- Please supply photocopies of extracts of sections of various acts on which reliance has been placed during arguments for convenience of the court while the Court is writing the judgment.
- While addressing the arguments to the NCLT, be polite and soft and at the same time firm and confident. While arguments, please do not leave an impression that you are unsure" on law and /or facts.

Don'ts

- If you are not aware of any matter, do not speak lie or imaging anything. Rather inform
- NCLT clearly and seek time to clarify the point from your client.
- Do not forget to carry relevant papers, materials and documents.
- Do not forget to be in dress code.
- Do not speak in language other than official language of NCLT.
- Do not speak in between while member of NCLT or other party is speaking.
- Never use words or language derogatory or insulting to others.
- Even if you know things better, do not impress upon NCLT that you are superior.
- Do not look at pocket of client or benefits to client.
- Never promise to client on outcome of the case before NCLT.

Appeal to NCLT against notice of refusal to transfer shares

Section 58 deals with the Appeals against the refusal for registration of transfer or transmission of securities

If a **private company** refuses the registration of securities the transferee may appeal to NCLT against the refusal in **Form NCLT-1** within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

If a **public company without sufficient cause** refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to NCLT in **Form NCLT-1.**

Refusal to transfer shares- whether permissible?

The grounds/reasons on which a Public Company can refuse to register transfer of shares have not been specifically enumerated under the Companies Act. However, the provision of 111A (2) of the Companies Act, 1956 allowed the Board of Directors to refuse to register transfer of shares "***for sufficient cause" Gujarat Machinery Manufactures Ltd. v. Nile Ltd.(2001) 105 Com Cas 817 (CLB).*** It is now well-settled that the words "***sufficient cause***" should not be given a restricted meaning. The Company is fully entitled to examine as to whether formalities required, such as signatures, stamp etc., have been fulfilled and that ***transfer would not involve violation of any other provision of the Companies Act, SEBI Act, or Regulations issued by SEBI, SICA or any other law for the time being in force.*** The Company, however, cannot act arbitrarily and will have to justify its action if questioned by the Company Law Board. It may be noted that under the scheme of Sec 108A to 108D of Companies Act, 1956,the Central Government while granting or declining to grant the approval for acquisition of shares, required to examine various factors such as :

- the impact of the acquisition on the management of the company,
- whether such an impact is desirable, the existing legal obligation of the company,
- whether such transfer itself would place the company in a situation to make a breach of certain existing contractual obligations of the company, thereby exposing the company to an action in law etc.

The company can thus also refuse to register transfer of shares on these grounds.

Refusal to register transfer of shares under Section 58 of Companies Act, 2013

The provisions of Section 58 of Companies Act, 2013, are as under:

(1) If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of **thirty days** from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

(2) Without prejudice to sub-section (*1*), the securities or other interest of any member in a public company shall be freely transferable:

Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

(3) The transferee may **appeal to the Tribunal** against the refusal within a period of **thirty days** from the date of receipt of the notice or in case no notice has been sent by the company, within a period of **sixty days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

(4) If a **public company** without sufficient cause **refuses to register** the transfer of securities within a period of **thirty days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of **sixty days** of such refusal or where no intimation has been received from the company, within **ninety days** of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(5) The Tribunal, while dealing with an appeal made under sub-section (3) or sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order –

(a) **direct that the transfer or transmission shall be registered** by the company and the company shall comply with such order within a period of **ten days** of the receipt of the order; or

(b) **direct rectification of the register under Section 59 of Companies Act,2013** and also **direct the company to pay damages**, if any, sustained by any party aggrieved.

(6) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Proforma of Appeal

Rule 70 of NCLT Rules, 2016 provides for the appeals against refusal for registration of transfer or transmission of securities under Section 58 or for rectification of register of members under Section 59 shall be made to the Tribunal by way of a petition in Form NCLT- 1. The petition/appeal shall be on legal size either white or green paper. The margin on the left hand side shall be one and half inch and on right hand side only half inch. On the top, margin be one and half inch and on the both bottom, half inch. The petition shall be accompanied by the following documents :-

Each page of the petition be signed by the petitioner/ appellant (without rubber stamp) and last page of the petition be also signed with rubber stamp, if any. All Annexures to be filed shall have to be certified as true copy.

Supporting Documents-Where the company is the petitioner:

- Copy of the memorandum and articles of association
- Latest audited balance sheet and profit and loss account, auditor's report and director's report
- Authenticated copy of the extract of the Register of Members
- Copy of the resolution of the Board or Committee of Directors (where applicable)
- Any other relevant documents
- Affidavit verifying the petition. (Format as given in **Form NCLT-6**), The affidavit shall have to be attested either by the Notary Public or by Oath Commissioner.

Bank draft evidencing payment of application fee. Bank Draft to be in the name of Accounts Officer, NCLT.

- Memorandum of appearance with copy of the Board Resolution or the executed Vakalatnama, as the case may be. (Format as given in Form **NCLT-12**). The Vakalatnama to be affixed with Stamp of Rs.5/- and must be signed by the person in whose favour it is given. If the Vakalatnama has been given for the petition to be filed in Delhi in any Court, Tribunal or Quasi-Judicial Authority, as per judgment of the Delhi High Court, the Advocate must certify that the persons signing the Vakalatnama has signed in his presence.

Two extra copies of the petition. The supporting affidavit to be notorized only on the original of the petition.

IMPORTANT POINTS:

a) The petition to be filed must also always be page numbered and proper Index be also prepared.

b) The Memo of Parties be also prepared – Proforma is given in Form **NCLT-12.**

c) In Delhi, the Registry of NCLT insist List of Dates and List of Events comprising of ¾ pages to be kept at the top of the petition.

Where the petition is made by any other person:

- Documentary evidence in support of the statements made in the petition including the copy of the letter written by the petitioner to the company for purpose of registering the transfer of, or the transmission of the right to, any share, or interest in, or debentures as also a copy of the letter of refusal of the company.
- Copies of the documents returned by the company.
- Any other relevant document.
- Affidavit verifying the petition. (Format as given in **Form NCLT-6**)
- Bank draft evidencing payment of application fee.
- Memorandum of appearance with copy of the Board's Resolution or the executed Vakalatnama, as the case may be. (Format as given in **Form NCLT-12**)
- Two extra copies of the petition.

A copy of such appeal shall be served on the concerned company at its registered office immediately after filing of the petition with the Tribunal.

Advertisement detailing petition

As per **Rule 35(1) of Companies NCLT Rules, 2016** the petitioner shall advertise the petition in **Form NCLT-3A** at least 14 days before the date fixed for hearing at least oncein a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

Rule 35(2) of Companies NCLT Rules, 2016: Every such advertisement shall state:

(a) the date on which the application, petition/ reference was presented;

(b) the name and address of the applicant petitioner and his authorized representative, if any;

(c) the nature and substance of application, petition/ reference;

(d) the date fixed for hearing;

(e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition/ reference at the hearing shall send a notice of his intention to the petitioner or his authorized representative so as to reach him not later than two days previous to the day fixed for hearing.

Rule 35(3) of Companies NCLT Rules, 2016: Where the advertisement is being given by the company, then the same shall also be placed on the website of the company, if any.

Rule 35(4) of Companies NCLT Rules, 2016: An affidavit shall be filed to the Tribunal with such proof of advertisement or of the service, as may be available in, not less than 3 days before the date fixed for hearing, stating whether the petition has been advertised in accordance with this rule and whether the notices, if any, have been duly served upon the persons required to be served.

Rule 35(5) of Companies NCLT Rules, 2016: Where the requirements of this rule or the direction of the Tribunal, as regards the advertisement and service of petition, are not complied with, the Tribunal may either dismiss the petition or give such further directions as it thinks fit.

Rule 35(6) of Companies NCLT Rules, 2016: The Tribunal may, if it thinks fit, and upon an application being made by the party, may dispense with any advertisement required to be published under this rule.

Notice to Opposite Party

Rule 37(1) of NCLT Rules, 2016 states that the Tribunal shall issue notice in **Form NCLT-5** to the respondent to show cause against the application or petition on a date of hearing specified in the notice. Such notice in **Form No. NCLT.5** shall be accompanied by a copy of the application with supporting documents.

Rule 37(2) of NCLT Rules, 2016: If the respondent does not appear on the date specified in the notice in **Form NCLT-5**, the Tribunal, after according reasonable opportunity to the Respondent, shall forthwith proceed ex-parte to dispose of the application.

Rule 37(3) of NCLT Rules, 2016: Where any objection of any person whose interest is likely to be affected by the proposed petition, he may either in person or through authorized representative file a reply accompanied with an affidavit along with copies of such documents on which it relies, with an advance service to the petitioner or applicant to the Registrar of Companies and Regional Director on or before the date of hearing and such reply and copies of documents shall form part of the record.

Filing of Affidavit under Rule 39 of NCLT Rules, 2016

The Tribunal may direct the parties to give evidence, if any, by affidavit. Every affidavit as to evidence to be filed before the Tribunal shall be in **Form NCLT-7.**

NCLT to dismiss Appeal or Direct Rectification

Rule 70(4) of the NCLT Rules, 2016 provides that the Tribunal may, while dealing with a petition under Section 58 or 59, at its discretion, make-

(a) order or any interim order, including any orders as to injunction or stay, as it may deem fit and just;

(b) such orders as to costs as it thinks fit; and

(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

Appeal against the Rectification of Register of Members

Section 59 deals with Appeal against the Rectification of Register of Members.

If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal to NCLT in **Form NCLT-1** or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

As per **Rule 70(5) of NCLT Rules, 2016** on any petition under section 59, the Tribunal may-

(a) decide any question relating to the title of any person who is a party to the petition to have his name entered in, or omitted from, the register;

(b) generally decide any question which is necessary or expedient to decide in connection with the application for rectification.

Who can file an Appeal?

Unlike an appeal under Section 58 on refusal to register the transfer/ transmission of Securities, wherein only transferee can appeal to Tribunal, an appeal under section 59 for rectification of Register of members can be made by a member of the company or any aggrieved person or by the Company itself.

Further in case of foreign members or debenture holders residing outside India, the appeal can be preferred at competent court outside India. In this regard, Central Government will specifically notify competent courts outside India which could hear matters for rectification.

Time Limit for filing of Appeal

It is important to note for seeking rectification under this Section there is no time limit provided. As per the decided case laws under section 111A of 1956 Act, courts have held though there is no time limit, the aggrieved person should approach court within reasonable time. Section 137 of Limitation Act also may come into play wherein limitation of three years may start from date of knowledge of cause of action.

Rest procedure for appeal against the Rectification of Register of Members is same as mentioned for appeal against refusal or register of transfer or transmission of securities by the company to the Tribunal as mentioned above.

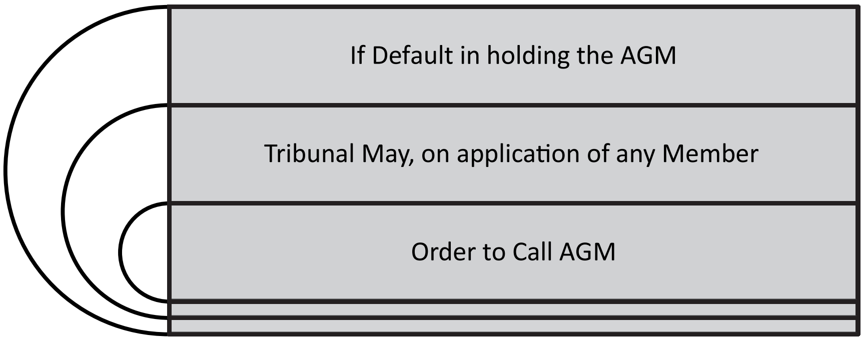
APPLICATION TO NCLT FOR DIRECTION FOR CALLING THE AGM AND OTHER MEETINGS

Section 97: Power of Tribunal to Call Annual General Meeting

(1) If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.


If Default in holding the AGM
Tribunal May, on application of any Member
Order to Call AGM

Section 98: Power of Tribunal to Call Meeting of Members, etc.

(1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either suo motu or on the application of any director or member of the company who would be entitled to vote at the meeting,—

(a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

It's pertinent to note here that while Section 97 talks about Direction by NCLT for holding the AGM on the application of a member on the other hand Section 98 talks about Direction by NCLT for holding any of the members meeting other then AGM.

Can a Company may apply for Calling AGM?

CLB in its decision in *Cannanore Whole Body CT Scan and Research Centre P. Ltd. Vs Saibunnisa S.V. (1998) 93 Com cases 99: (1998) 3 Comp LJ 518: (1998) 29 CLA 446 (CLB- SB)* stated as "It is clear that a member and not the company is empowered to invoke the provisions of Sec 167. Any application, if filed by the Company will be bad in law and will be treated *ab initio* defective as Company can't seek direction against itself." Also an applicant, whose membership has been disputed by the company by showing that he has transferred his entire shareholding, has no Locus standi to make an application under the Section. *M. Sampath* vs. *AKMN Cylinders (P.) Ltd. (1998) 29 CLA 455 (CLB – SB)*

Procedural of Application

As per NCLT Rules, 2016 (Applicable to all kind of Application to be filed before NCLT):

1. **Preparation of Application/Petition to be filed:**
   - a. Every petition or application shall be filed before the Bench having territorial jurisdiction.
   - b. Every application/petition before the tribunal shall be filed in **NCLT form No.1 [Rule 34(3)]** with attachment thereto accompanied by FORM NO. NCLT 2**.**
   - c. Every application/petition to be filed with the tribunal shall be prepared in triplicate.
   - d. The applicant may, by way of a separate application, apply to the President and the President may thereupon for the reasons to be recorded, direct a Bench other than the Bench which has territorial jurisdiction to adjudicate upon it. [Rule 16(d)].
2. **Sequence in which details to be mentioned in every application/ petition:-** Every application/petition the following sequence while mentioning the facts in the application/petition namely;
   - a. General heading of all proceedings before the Tribunal shall be as per **NCLT Form No.4 [Rule 34(2)].**
   - b. Then details of Applicants/Petitioners to be mentioned.
   - c. To mention the jurisdiction of the Bench–The jurisdiction of the bench is to be mentioned.
   - d. **Limitation period to be mentioned** i.e. whether the present application/petition is within the limitation period or not.
   - e. **Facts of the case to be mentioned:** It is required to mention the reasons for not holding the AGM in Detail.
   - f. **Relief sought from the tribunal to be mentioned:** In the Prayer for relief the direction of the tribunal can be sought to call or direct the calling of AGM of the Company and such other direction as the Hon'ble Tribunal may deems fit.

   g. **Details of Bank Draft evidencing the payment of prescribed fees:** Appropriate amount is required to be paid as fees for filing the application in the form of Bank draft. The details of the same are also to be mentioned by giving following details i.e. (a) Bank Draft No, (b) Branch on which it is drawn, (c) Name of the Issuing branch, (d) Date and (e) Amount.

3. **Affidavit accompanying the petition:** Every Application/Petition filed before the Tribunal shall be accompanied by a duly notarized affidavit of the authorized representative/s of the applicant/ petitioner in the Form No.NCLT 6 [Rule 34(4)].

4. **Filing of Vakalatnama:** Every application/Petition should also be accompanied by the Vakalatnama of the Advocate/Legal practitioner representing the client in the Form NCLT 12.

5. **Memo of Appearance:** A memo of appearance is required to be filed in the form NCLT 12 by the practicing Company Secretary or Chartered Accountant or Cost Accountant appearing before the tribunal for representing their client.

6. **An Interlocutory Application** shall be filed in FORM No. NCLT 1 accompanied by such attachment thereto along with FORM No. NCLT 3.

8. Where on date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

9. Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the petition or application was called for hearing, the Tribunal shall make an order restoring the same.

   Provided that where the case was disposed of on merits the decision shall not be re-opened.

10. Application, petition or reference, if required, shall be advertised in Form No. NCLT 3A at least 14 days before the date fixed for hearing the application/petition in at least 2 newspaper one in English and another in the vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated.

Rule 74 of NCLT Rules : Application for calling or obtaining a Direction to Call Annual General Meeting under Section 97 of CA 2013

1. Every Application under Section 97 for calling or obtaining a direction to call the Annual General Meeting of the company shall be made by any member of the Company in **Form No. NCLT 1** and shall be accompanied by the following documents.

2. **DOCUMENTS TO BE FILED ALONG WITH APLICATION/PETITION U/S97**

   Following documents to be annexed with the application to be filed u/s 97

   a. Affidavit verifying the application/petition – Form No. NCLT 6 [Rule 34(4)].
   b. Bank Draft evidencing the payment of application fee. – The Present fee is Rs. 1000/-
   c. Any other Relevant Documents – Which may include the following
      - Copy of Board Resolution to Appoint Authorized representative.
      - Copy of the last Audited Financial statements.
      - Copy of Memorandum and Articles of association of the company.

A Copy of the application shall be served on the Registrar of Companies on or before the date of hearing.

APPLICATION FOR COMPROMISE AND ARRANGEMENTS INCLUDING MERGERS AND AMALGAMATIONS

The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 deals with the procedure Mergers and Amalgamations. The relevant rules and related provisions are discussed as under:

Application for order of meeting (Rule 3)

(1) An application of section 230(1) of the Companies Act, 2013 may be submitted in Form No. NCLT-1 (appended in the National Company Law Tribunal Rules, 2016) along with:-

  (i) a notice of admission in Form No. NCLT-2 (appended in the National Company Law Tribunal Rules; 2016);

  (ii) an affidavit in Form No. NCLT -6 (appended in the National Company Law Tribunal Rules, 2016);

  (iii) a copy of scheme of compromise or arrangement, which should include disclosures as per section 230(2) of the Companies Act, 2013; and

  (iv) fee as prescribed in the Schedule of Fees.

(2) Where more than one company is involved in a scheme in relation to which an application under sub-rule (1) is being filed, such application may, at the discretion of such companies, be filed as joint-application.

(3) Where the company is not the applicant, a copy of the notice of admission and of the affidavit shall be served on the company, or, where the company is being wound up, on its liquidator, not less than fourteen days before the date fixed for the hearing of the notice of admission.

(4) The applicant shall also disclose to the Tribunal in the application under sub-rule (1), the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme.

(5) A member of the company shall make an application for arrangement, for the purpose of takeover offer in terms of section 230(11), when such member along with any other member holds not less than three-fourths of the shares in the company, and such application has been filed for acquiring any part of the remaining shares of the company.

Explanation I.- “shares” means the equity shares of the company carrying voting rights, and includes any securities, such as depository receipts, which entitles the holder thereof to exercise voting rights.

Explanation II.- Nothing in this sub-rule shall apply to any transfer or transmission of shares through a contract, arrangement or succession, as the case may be, or any transfer made in pursuance of any statutory or regulatory requirement.

(6) An application of arrangement for takeover offer shall contain:

  (a) the report of a registered valuer disclosing the details of the valuation of the shares proposed to be acquired by the member after taking into account the following factors: -

    (i) the highest price paid by any person or group of persons for acquisition of shares during last twelve months;

    (ii) the fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple *vis-a-vis* the industry average, and such other parameters as are customary for valuation of shares of such companies.

  (b) details of a bank account, to be opened separately, by the member wherein a sum of amount not less than one-half of total consideration of the takeover offer is deposited.

Section 230(1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them,

the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Companies Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Rule 5 deals with the provisions relating to Directions at hearing of the application. It provides:

Upon hearing the application under section 230(1) of the Companies Act, 2013 NCLT shall, unless it thinks fit for any reason to dismiss the application, give such directions as it may think necessary in respect of the following matters:

(a) determining the class or classes of creditor or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement; or dispensing with the meeting or meeting for any class or classes or creditors in terms of section 230(9);

(b) fixing the time and place of the meeting or meetings;

(c) appointing a Chairperson and scrutinizer for the meeting or meetings to be held, as the case may be and fixing the terms of his appointment including remuneration;

(d) fixing the quorum and the procedure to be followed at the meeting or meetings, including voting in person or by proxy or by postal ballot or by voting through electronics means;

Explanation.- For the purpose of these rules, "voting through electronics means" shall take place, mutatis mutandis, in accordance with the procedure as specified in rule 20 of Companies (Management and Administration) Rules, 2014.

(e) determining the values of the creditors or the members, or the creditors or member of any class, as the case may be, whose meetings have to be held;

(f) notice to be given of the meeting or meetings and the advertisement of such notice;

(g) notice to be given to sectoral regulators or authorities as required under section 230(5);

(h) the time within which the chairperson of the meeting of the meeting is required to report the result of the meeting to the tribunal; and

(i) such other matters as the Tribunal may deem necessary.

Rule 6. Notice of meeting

Where a meeting of any class or classes of creditors or members has been directed or to be convened, the notice of the meeting pursuant to the order of the Tribunal to be given in the manner provided in sub-section (3) of section 230 of the Companies Act shall be in Form No. CAA.2 and shall be sent individually to each of the creditors or members.

Section 230(3)

Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company *which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:*

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed:

Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

Rule 7: Advertisement of the notice of the meeting

The notice of the meeting under section 230(3) of the Companies Act, 2013 shall be advertised in Form No. CAA.2 in at least one English newspaper and in at least one vernacular newspaper having wide circulation in the state in which the registered office of the company is situated, or such newspaper as may be directed by the Tribunal and shall also be placed, not less than thirty days before the date fixed for the meeting, on the website of the company of the SEBI and the recognized stock exchange where the securities of the company are listed:

Provide that where separate meetings of classes of creditors or members are to be held, a joint advertisement for such meetings may be given.

Rule 8: Notice to statutory authorities

(1) For the purpose of section 230(5) of the Companies Act, 2013 the notice shall be in Form No. CAA.3, and shall be accompanied with a copy of the scheme of compromise or arrangement, the explanatory statement and the disclosures mentioned under rule 6, and shall be sent to.-

   (i) the Central Government, the Registrar of Companies, the Income-tax authorities, in all cases;

   (ii) the Reserve Bank of India, the Securities and Exchange Board of India, the competition commission of India, and the stock exchanges, as may be applicable;

   (iii) other sectoral regulators or authorities, as required by Tribunal.

(2) The notice of the authorities mentioned in sub-rule (1) shall be sent forthwith, after the notice is sent to the members or creditors of the company, by registered post or by speed post or by courier or by hand delivery at the office of the authority.

(3) It the authorities referred to under sub-rule (1) desire to make any representation under section 230(5), the same shall be sent to the Tribunal within a period of thirty days from the date of receipt of such notice and copy of such representation shall simultaneously be sent to the concerned companies and in case of representation is received within the stated period of thirty days by the Tribunal, it shall be presumed that the authorities have no representation to make on the proposed scheme of compromise or arrangement.

Section 230(5)

A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India *established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.*

Rule 14: Report of the result of the meeting by chairperson

The chairperson of the meeting (or where there are separate meetings , the chairperson of each meeting) shall, within the time fixed by the tribunal, or where no time has been fixed ,within three days after the conclusion of the meeting submit a report to the Tribunal on the result of the meeting in Form No. CAA.4.

Rule 15: Petition for confirming compromise or arrangement

Where the proposed compromise or arrangement is agreed to by the members or creditors or both as the case maybe with or without modification, the company (or its liquidator),shall , within seven days of the filing of the report by the chairperson , present a petition to the tribunal in Form No.CAA.5 for sanction of the scheme of compromise or arrangement.

Rule 21: Statement of compliance in mergers and amalgamations

For the purpose of section 232(7) of Companies Act, 2013 every company in relation to which an order is made under section 232(3) of the Companies Act, 2013 shall until the scheme is fully implemented, file with the registrar of companies, the statement in Form No.CAA.8 within two hundred and ten days from the end of each financial year.

Section 232(3)

The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2)has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(a) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;

(d) dissolution, without winding-up, of any transferor company;

(e) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;

(f) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;

(g) the transfer of the employees of the transferor company to the transferee company;

(h) where the transferor company is a listed company and the transferee company is an unlisted company,—

(A) the transferee company shall remain an unlisted company until it becomes a listed company;

(B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal:

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

(i) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and

(j) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

Section 232(7)

Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

Rule 25: Merger or Amalgamation of certain companies:-

(1) The notice of the proposed scheme, under clause (a) of section 233 of the Companies Act, to invite objections or suggestions from the Registrar and official liquidator or persons affected by the scheme shall be in **Form No.CAA.9.**

(1A) A scheme of merger or amalgamation under section 233 of the Companies Act may be entered into between any of the following class of companies, namely:-

(i) two or more start-up companies; or

(ii) one or more start-up company with one or more small company.

Explanation.- For the purposes of this sub-rule, "start-up company" means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade.

(2) For the purposes of of section 233(1)(c) of the Companies act the declaration of solvency shall be filed by each of the companies involved in the scheme of merger or amalgamation in **Form No.CAA.10** along with the fee as provided in the companies (Registration offices and fees) Rules, 2014, before convening the meeting of members and creditors for approval of the scheme.

(3) For the purpose of clause (b) and (d) of sub-section (1) of section 233 of the Act, the notice of the meeting to the members and creditors shall be accompanied by-

(a) a statement , as far as applicable, referred to in sub section (3) of section 230 of the act read with sub rule (3) of rule 6 hereof ;

(b) The declaration of solvency made in pursuance of clause (c) of sub-section (1) of section 233 of the Act in **Form No.CAA.10;**

(c) A copy of the scheme.

(4) (a) For the purposes of sub-section (2) of section 233 of the Act, the transferee company shall, within seven days after the conclusion of the meeting of members or class of members or creditors, file a copy of the scheme as agreed to by the members and creditors, along with a report of the result of each of the meetings in **Form no. CAA.11** with the central government.

(b) Copy of the scheme shall also be filed , along with **Form No. CAA.11** with-

(i) the registrar of companies in **form no. GNL-1**; and

(ii) the official liquidator through hand delivery or by registered post or speed post.

(5) Where no objection or suggestion is received within a period of thirty days of receipt of copy of scheme under sub-section (2) of section 233, from the Registrar of Companies and Official Liquidator by the Central Government and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, it may, within a period of fifteen days after the expiry of said thirty days, issue a confirmation order of such scheme of merger or amalgamation in **Form No. CAA.12**:

Provided that if the Central Government does not issue the confirmation order within a period of sixty days of the receipt of the scheme under sub-section (2) of section 233, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

(6) Where objections or suggestions are received within a period of thirty days of receipt of copy of scheme under sub-section (2) of section 233 from the Registrar of Companies or Official Liquidator or both by the Central Government and –

(a) such objections or suggestions of Registrar of Companies or Official Liquidator, are not sustainable and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, it may within a period of thirty days after expiry of thirty days referred to above, issue a confirmation order of such scheme of merger or amalgamation in **Form No. CAA.12**

(b) the Central Government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest or in the interest of creditors, it may within sixty days of the receipt of the scheme file an application before the Tribunal in **Form No. CAA.13** stating the objections or opinion and requesting that Tribunal may consider the scheme under section 232 of the Act:

Provided that if the Central Government does not issue a confirmation order under clause (a) or does not file any application under clause (b) within a period of sixty days of the receipt of the scheme under subsection (2) of section 233 of the Act, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

(7) The confirmation order of the scheme issued by the central government or tribunal under sub section (7) of section 233 of the Act, shall be filed, within thirty days of the receipt of the order of confirmation, in **Form INC-28**.

(8) For the purpose of this rule, it is clarified that with respect to schemes of arrangement or compromise falling within the purview of section 233 of the act, the concerned companies may , at their discretion, opt to undertake such schemes under sections 230 to 232 of the Act, including where the condition prescribed in clause (d) of sub-section (1) of section 233 of the act has not been met.

Section 233

233. (1) Notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:—

(a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;

(b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. of the total number of shares;

(c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and

(d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

(2) The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.

(3) On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.

(4) A copy of the order under sub-section (6) confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.

Merger or amalgamation of a foreign company with a Company and vice versa (Rule 25A)

(1) A foreign company incorporated outside India may merge with an Indian company after obtaining prior approval of Reserve Bank of India and after complying with the provisions of sections 230 to 232 of the Act and these rules.

(2) (a) A company may merge with a foreign company incorporated in any of the jurisdictions specified in Annexure B after obtaining prior approval of the Reserve Bank of India and after complying with provisions of sections 230 to 232 of the Act and these rules.

(b) The transferee company shall ensure that valuation is conducted by valuers who are members of a recognised professional body in the jurisdiction of the transferee company and further that such valuation is in accordance with internationally accepted principles on accounting and valuation. A declaration to this effect shall be attached with the application made to Reserve Bank of India for obtaining its approval under clause (a) of this sub-rule.

(3) The concerned company shall file an application before the Tribunal as per provisions of section 230 to section 232 of the Act and these rules after obtaining approvals specified in sub-rule (1) and sub-rule (2), as the case may be.

(4) Notwithstanding anything contained in sub-rule (3), in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate which has been incorporated in a country which shares land border with India, a declaration in Form No. CAA-16 shall be required at the stage of submission of application under section 230 of the Act.

Explanation 1. For the purposes of this rule the term "company" means a company as defined in clause (20) of section 2 of the Act and the term "foreign company" means a company or body corporate incorporated outside India whether having a place of business in India or not:

Explanation 2. For the purposes of this rule, it is clarified that no amendment shall be made in this rule without consultation of the Reserve Bank of India."

(5) Where the transferor foreign company incorporated outside India being a holding company and the transferee Indian company being a wholly owned subsidiary company incorporated in India , enter into merger or amalgamation, –

(i) both the companies shall obtain the prior approval of the Reserve Bank of India;

(ii) the transferee Indian company shall comply with the provisions of section 233;

(iii) the application shall be made by the transferee Indian company to the Central Government under section 233 of the Act and provisions of rule 25 shall apply to such application; and

(iv) the declaration referred to in sub-rule (4) shall be made at the stage of ma king application under section 233 of the Act.".

Rule: 26 Notice to dissenting shareholders for acquiring the shares

For the purposes of sub-section (1) of section 235 of the Act, the transferee company shall send a notice to the dissenting shareholder(s) of the transferor company , in Form No.CAA.14 at the last intimated address of such shareholder for acquiring the shares of such dissenting shareholders.

Section 235(1)

Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

Rule 28: Circular containing scheme of amalgamation or merger

(1) For the purposes of section 238(1)(a) of the Companies Act, every circular containing the offer of scheme or contract involving transfer of shares or any class of shares and recommendation to the members of the transferor company by its directors to accept such offer, shall be accompanied by such information as set out in Form No. CAA.15.

(2) The circular shall be presented to the Registrar for registration.

Section 235(1)

Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

FORM NO. CAA.1

[Pursuant to section 230(2)(c)(i) and rule 4]

Creditor's Responsibility Statement

I/ We, ________________, the creditors of M/s______________ for an amount of Rs. __________________ as on __________________________ do hereby declare that I / we have read and understood the proposed corporate debt restructuring scheme and am / are of the view that it is in my/our best interest to concur with the scheme.

I/ We further declare that the debt is owed to me / us by the company or the liability was created by the company in my/ our favor in good faith and in the ordinary course of business of the company;

I/We believe that the scheme does not give me/us any fraudulent preference at the cost of any secured/ unsecured Creditors.

Signature of creditor/s

Date:

Place:

FORM NO. CAA. 2

[Pursuant to Section 230 (3) and rule 6 and 7)]

Company Petition No ______of 20____

____________________Applicant(s)

Notice and Advertisement of notice of the meeting of creditors or members

Notice is hereby given that by an order dated the ______ 20 _____ the ______ Bench of the National Company Law Tribunal has directed a meeting (or separate meetings) to be held of [here mention 'debenture holders' or 'first debenture holders' or' second debenture holders' or 'unsecured creditors' or 'secured creditors' or 'preference shareholders' or 'equity shareholders' as the case may be whose meeting or meetings have to be held] of the said company for the purpose of considering, and if thought fit, approving with or without modification, the compromise or arrangement proposed to be made between the said company and [here mention the class of creditors or members with whom the compromise or arrangement or amalgamation is to be made] of the company aforesaid.

In pursuance of the said order and as directed therein further notice is hereby given that a meeting of [here set out the class of creditors or members whose meeting has to be held] of the said company will be held at _______ on _____day of ______________ 20___ at__________ o'clock in the noon at which time and place the said [here mention the class of creditors or members] are requested to attend [Where separate meetings of classes of creditors or members are to be held, set them out separately with the place, date and time of the meeting in each case.]

Copies of the said compromise or arrangement or amalgamation, and of the statement under section 230 can be obtained free of charge at the registered office of the company or at the office of its authorized representative Shri_____________ at_______ Persons entitled to attend and vote at the meeting (or respective meetings), may vote in person or by proxy, provided that all proxies in the prescribed form are deposited at the registered office of the company at _____________ not later than 48 hours before the meeting.

Forms of proxy can be had at the registered office of the Company.

The Tribunal has appointed Shri __________________ and failing him, Shr i________________ as chairperson of the said meeting (or several meetings). The abovementioned compromise or arrangement or amalgamation, if approved by the meeting, will be subject to the subsequent approval of the tribunal.

Dated this _____day of ________20_____

Chairperson appointed for the meeting

(or as the case may be)

FORM NO. CAA.3

[Pursuant to section 230(5) and rule 8]

In the Matter of compromise and / or arrangement of ___________________

NOTICE TO CENTRAL GOVERNMENT, REGULATORY AUTHORITIES

To,

The Central Government/
The Registrar of Companies/
The Income-Tax Authorities/
[in all cases]
The Reserve Bank of India/
The Securities and Exchange Board of India/
The Stock Exchanges of ..../
The Competition Commission of India/
[as may be applicable]
Other sectoral regulator or authorities
[As required by Tribunal]

Notice is hereby given in pursuance of sub-section (5) of section 230 of the Companies Act, 2013, that as directed by the ______ Bench of the National Company Law Tribunal at ______ by an order dated _________ under sub-section (1) of section 230 of the Act, a meeting of the members and / or creditors of (Company's name)___________ shall be held on _____________ to consider the scheme of compromise and / or arrangement of ______________ with _____________ at _______________-

A copy of the notice and scheme of the compromise or arrangement are enclosed.

You are hereby informed that representations, if any, in connection with the proposed compromise and / or arrangement may be made to the Tribunal within thirty days from the date of receipt of this notice. Copy of the representation may simultaneously be sent to the concerned company(ies).

In case no representation is received within the stated period of thirty days, it shall be presumed that you have no representation to make on the proposed scheme of compromise or arrangement.

Authorized Signatory

Dated this ______ day of_______ 20___

Place:

Enclosures :

i) Copy of notice with statement as required under section 230(3);

ii) Copy of scheme of compromise or arrangement

FORM NO. CAA.5

[Pursuant to section 230 and rule 15(1)]

[HEADING AS IN FORM NCLT. 4]

Petition to sanction compromise or arrangement

The petition of _______Ltd, (*in liquidation by its liquidator) the petitioner above named is as follows:-

1. The object of this petition is to obtain sanction of Tribunal to a compromise or arrangement whereby (here set out the nature of the compromise or arrangement).
2. The company was incorporated under the ________________ Act _________ with a nominal capital of Rs _____________ divided into shares of Rs _____ each of which ______ shares were issued and Rs_____ was paid up on each share issued.
3. The objects for which the company was formed are as set forth in the company's Memorandum of Association. They are: (Set out the principal objects).
4. [Here set out the nature of the business carried on by the company, its financial position and the circumstances that necessitated the compromise or arrangement and the benefits sought to be achieved by the compromise or arrangement and its effect].
5. The compromise or arrangement was in the following terms:-[Here set out the terms of the compromise or arrangement].
6. By an order made in the above matter on ______________ the petitioner was directed to convene a meeting of [here set out the class of creditors or members of whom the meeting was to be held] of the company for the purpose of considering and, if thought fit approving with or without modifications. The said compromise or arrangement and the said order directed that [...] or failing him [...] should act as chairperson of the said meeting and should report the result thereof to this Tribunal.
7. Notice of the meeting was sent individually to the [here mention the class of creditors or members to whom the notice was sent] as required by the order together with a copy of the compromise or arrangement and of the statement required by section 231, 232 read with section 230 of the Act and a form of proxy. The notice of the meeting was also advertised as directed by the said order in (here set out the newspapers).
8. On the ____, a meeting of (here mention the class of creditors or members whose meeting was convened) of the company duly convened in accordance with the said order, was held at _____and the said ______, acted as the chairperson of the meeting.
9. The said _____, has reported the result of the meeting to this Hon'ble Tribunal.
10. The said meeting was attended by (here set out the number of the class of creditors or members, as the case may be, who attended the meeting either in person or by proxy), and the total value of their [here mention debts, debentures or shares, as the case may be] is Rs_______ [in the case of shares, the total

number and value of the shares should be mentioned] representing [_____ percentage] of the total value of debts or debentures or shares _________ of the company. The said compromise or arrangement was read and explained by the said _____, to the meeting and it was resolved unanimously [or by a majority of _____ votes against _______ votes] as follows:-[Here set out the resolution as passed].

11. The sanctioning of the compromise or arrangement will be for the benefit of the company.

12. Notice of this petition need not be served on any person. The petitioner therefore prays:

    (1) That the said compromise or arrangement may be sanctioned by the Tribunal as to be binding on all the [here set out the class of creditors or members of the company on whom the compromise or arrangement is to be binding] of the said company and on the said company.

    (2) Or such other order may be made in the premises as to the Tribunal shall deem fit.

Verification etc. Petitioner

[*Note: (1) The affidavit in support should verify the petition and prove any matters not proved in any prior affidavit, such as advertisement, holding of meetings, posting of notices, copies of compromise or arrangement and proxies etc., and should exhibit the report of the chairperson and verify the same.]*

Note: (2) If the company is being wound-up, say so.

Note: (3) If any modifications were made in the compromise or arrangement, at the meeting, they should be set out in separate paragraph.

** To be inserted where the company is being wound-up.*

FORM NO. CAA.8

[Pursuant to section 232(7) and rule 21]

In the Matter of compromise and / or arrangement of ________________

Statement to be filed with Registrar of Companies

1. (a) Corporate identity number (CIN) of company:
   (b) Global location number (GLN) of company:
2. (a) Name of the company:
   (b) Address of the registered office of the company:
   (c) E-mail ID of the company:
3. Date of Board of Directors' resolution approving the scheme
4. Date of Order of Tribunal approving the Scheme under Section 232(3)
5. Details regarding:-
   a) Completed actions under the Order
   b) Pending actions under the Order with status

Declaration of compliance of scheme as per the Order of the Tribunal

I, the Director / Company Secretary of ___________ do solemnly affirm and declare that we are in compliance with the Order of the Tribunal dated _________.

A copy of the scheme of the compromise or arrangement is enclosed.

____

Director / Company Secretary

____

Chartered Accountant in practice / Cost Accountant in practice / Company Secretary in practice

Date:

Place:

Attachments:-

1) **Scheme of Compromise or Arrangement**
2) **Details of Compliance of the Scheme**
3) **Other Attachments, if any**

FORM NO. CAA.9

[Pursuant to section 233(1)(a) and rule 25(1)]

Notice of the scheme inviting objections or suggestions

Notice is hereby given by M/s __________ (transferor / transferee company) that a scheme of merger or amalgamation is proposed to be entered with M/s ______________ (transferor / transferee company) and in pursuance of sub-section (1)(a) of Section 233 of the Companies Act, 2013, objections or suggestions are invited in respect of the scheme.

A copy of the scheme of merger or amalgamation is enclosed.

Objections or suggestions are invited from –

(i) the Registrar (mention the details of the Registrar of the area where the registered office of the transferor/ transferee company is situated);

(ii) Official Liquidator (mention the details of the Official Liquidator of the area where the registered office of the transferor company is situated); and

(iii) Any person whose interest is likely to be affected by the proposed scheme.

Any person mentioned in (i) , (ii) or (iii) above, desirous of providing objections or suggestions in respect of the scheme should send their objections or suggestions within thirty days from the date of this notice to ______________(the Central Government at ___________________________________ (address) and to Shri ________ (address) being authorised representative of the transferor company).

Date :

Place :

Sd/- (mention the details of the authorised representative of the transferor company).

Enclosure: A copy of the scheme of merger or amalgamation

FORM NO.CAA.11

[Pursuant to section 233(2) and rule 25(4)]

Notice of approval of the scheme of merger

(To be filed by the transferee company to the Central Government, Registrar and the Official Liquidator)

1. (a) Corporate Identity Number (CIN) :
   (b) Global Location Number GLN) :
2. (a) Name of the transferee company:
   (b) Registered office address:
   (c) E-mail id:
3. Whether the transferor and transferee are:
   - Small companies
   - Holding and wholly owned subsidiaries
4. Details of transferor
   (a) Corporate Identity Number (CIN) :
   (b) Global Location Number GLN) :
   Name of the company:
   Registered office address:
   E-mail id:
5. Brief particulars of compromise or arrangement involving merger:
6. Details of approval of the scheme of merger by the transferee company:
   (a) Approval by members
      (i) Date of dispatch of notice to members:
      (ii) Date of the General meeting:
      (iii) Date of approval of scheme in the General meeting:
      (iv) Approved by majority of: (members or class of members holding atleast ninety percent of the total number of shares)
   (b) Approval by creditors
      (i) Date of dispatch of notice to creditors:
      (ii) Date of the meeting of creditors:
      (iii) Date of approval of scheme in creditors meeting:
      (iv) Approved by majority of: (at least nine tenth in value of creditors)
7. Details of approval of the scheme of merger by the transferor company:
   (a) Approval by members
      (i) Date of dispatch of notice to members:
      (ii) Date of the General meeting:

  - (iii) Date of approval of scheme in the General meeting:
  - (iv) Approved by majority of: (members or class of members holding atleast ninety percent of the total number of shares)

(b) Approval by creditors

  - (i) Date of dispatch of notice to creditors:
  - (ii) Date of the meeting of creditors:
  - (iii) Date of approval of scheme in such meeting:
  - (iv) Approved by majority of: (at least nine tenths in value of creditor)

Declaration

I _____________ the director of the transferee company hereby declares that-

(i) Notice of the scheme as required under section 233(1)(a) was duly sent to the Registrars and Official Liquidators of the place where the registered office of the transferor and transferee companies are situated and to all other persons who are likely to be affected by the scheme and a copy of the same has been attached herewith;

(ii) the objections to the scheme have been duly taken care of to the satisfaction of the respective persons;

(iii) the scheme has been approved by the members and creditors of the transferee and transferor company by the requisite majority in accordance with section 233(1)(b) and (d) respectively;

(iv) all the requirements under section 233 of the Act and the rules made there have been complied with; and

(v) to the best of my knowledge and belief the information given in this application and its attachments is correct and complete;

Date:

Place:

Signature

Attachments:

1. Copy of the scheme approved by both creditors and members;
2. Notice sent in accordance with section 233(1)(a);
3. Optional attachments, if any.

FORM NO. CAA.14

[Pursuant to section 235(1) and rule 26]

Notice to dissenting shareholders

To

____

____

Notice for acquiring ________shares held by you in M/s_______(hereinafter called ‘the transferor company’)

Notice is hereby given by M/s____________ (hereinafter called ‘the transferee company’) that an offer made by the transferee company on ________________ to all the shareholders of the transferor company for acquisition of the shares or class of shares at the price of ________ has been approved by the holders of __________ in value of the shares, being not less than nine-tenth in value of the said shares (other than shares already held at the date of the offer by the transferee company either by itself or by its nominees or subsidiaries).

In pursuance of the provisions of sub-section (1) of section 235 of the Companies Act 2013, notice is further given that the transferee company is desirous of acquiring __________ shares held by you in the transferor company at a price of Rs ____________, being the price paid to the approving shareholders.

Take further note that if you are not in favour of such acquisition of your shares by the transferee company, then you may apply to the Tribunal within one month hereof. Unless an application is made by you as aforesaid or unless on such application the Tribunal orders otherwise, the transferee company will be entitled and bound to acquire the aforesaid shares held by you in the transferor company on the terms of the above mentioned offer.

Date:

Place:

Signature

(On behalf of transferee company)

APPLICATION IN CASE OPPRESSION AND MISMANAGEMENT & CLASS ACTIONS

Application to Tribunal for relief in cases of oppression, etc.

"241. (1) Any member of a company who complains that –

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter."

(3) Where in the opinion of the Central Government there exist circumstances suggesting that—

(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;

(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.

(5) Every application under sub-section (3)—

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.

It may be relevant to note that under the 1956 Act, oppression was defined under section 397 & mismanagement was under section 398, however now in the 2013 Act, both now stands merged in a single section under section 241 as far as the meaning of oppression & mismanagement, whereas the powers are defined under section 242.

However in order to understand the meaning of oppression & mismanagement, following judgments are relevant to understand:

"In Re.:V.S Krishnan vs. *Westfort Hi-Tech Hospital Ltd. [2008] 142 Comp. Cas. 235 (SC).* The apex court after considering various judgments passed over the years and after considering the facts of the case has held that following *conditions are required to be satisfied for invoking section 397.*

Oppression would be made out:

(a) Where the conduct is harsh, burdensome and wrong.

(b) Where the conduct is *mala fide* and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders *vis-a-vis* the others.

(c) The action is against probity and good conduct.

(d) The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression under Sections 397 and 398.

(e) Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the Company Law Board under Section 402 to set right, remedy or put an end to such oppression is very wide.

(f) As to what are facts which would give rise to or constitute oppression is basically a question of fact and, therefore, whether an act is oppressive or not is fundamentally/basically a question of fact."

Further the judgment of *Bengal Luxmi Cotton Mills Ltd. [1965] 35 Comp Cas. 187 (Cal.) has held:*

"If an applicant before the court wants the court to rely upon charges of fraud and other misconduct and investigate them, he must give particulars. Mere vague allegations of fraud and other misconduct would not be enough, and the court should decline to embark upon an enquiry into such charges of fraud and misconduct. If a minority group of shareholders has not in its possession all the particulars of fraud or other misconduct, it should not expect the court to make any order in its favour after making a rambling enquiry into vague and indefinite charges of fraud made in the petition.

It may be that in some cases the petitioner has not in his possession all the particulars of fraud, but in such a case he would be entitled to discovery, in order to obtain materials for giving the particulars. But, nevertheless, the particulars must be given. If the applicant, in the instant case, did not have the particulars, he could have, and he should have, applied for particulars, if he wanted to rely on the charge of fraud. But merely because the minority group of shareholders generally has not got in its possession all the particulars of fraud or other misconduct, it is not excused or exonerated from giving particulars of fraud or other alleged acts of misappropriation or other misconduct.

The apex court *In Re. Shanti Prasad Jain v. Kalinga Tubes Ltd. [1965] 35 Comp Cas 351 (SC)* has also held that

"The appellant and his group would not get any relief by calling a general meeting of the company, and the facts and circumstances aforesaid would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up. Therefore the appellant prayed for directions under Section 397 of the Act, as the winding up of the company which was in a prosperous condition would unfairly prejudice the appellant and other members of the minority group and redress against such oppression could be given by the High Court by making suitable directions in that behalf. The affairs of the company were being conducted in a manner prejudicial to the interest of the company for reasons already stated and there had been a material change in the management or control of the company by alteration in its board of directors and by fraudulent changes introduced in the ownership of the company's shares and by reason of the wrongful act and conduct of the Patnaik and Loganathan groups.

In Harmer's case, it was held that "the word 'oppressive' meant burdensome, harsh and wrongful". It was also held that " the section does not purport to apply to every case in which the facts would justify the making of a winding up order under the ' just and equitable' rule, but only to those cases of that character which have in them the requisite element of oppression."

The phrase "oppressive to some part of the members" suggests that the conduct complained of " should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fairplay on which every share holder who entrusts his money to a company is entitled to rely..... But, apart from this, the question of absence of mutual confidence per se between partners, or between two sets of shareholders, however relevant to a winding up, seems to me to have no direct relevance to the remedy granted by Section 210. It is oppression of some part of the shareholders by the manner in which the affairs of the company are being conducted that must be averred and proved. Mere loss of confidence or pure deadlock does not come within Section 210. It is not lack of confidence between share holders per se that brings Section 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs and oppression involves ... at least an element of lack of probity or fair dealing to a member in the matter of his proprietary right as a shareholder."

As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of Section 397, It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts in this case with reference to Section 397."

Thus the meaning of words oppression & mismanagement has to be considered & understood in light of the above judgments. Of course every case depends upon on its own fact, however the above broadly spells out the scope of oppression and mismanagement.

242 - POWERS OF TRIBUNAL

"242. (1) If, on any application made under section 241, the Tribunal is of the opinion –

(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of,

make such order as it thinks fit.

(2) Without prejudice to the generality of the powers under sub-section (1) an order under that sub-section may provide for –

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

The earlier provision under 1956 Act had provided powers to grant final relief under section 402 & interim relief's under section 403. The present Act now provides for all the powers to grant relief's under section 242. The present section provides extensive specific powers to tribunal to grant relief's by tribunal, though some of the sub section have not been notified as highlighted above.

However in order to understand the powers of tribunal, the following issues & judgments will highlight the powers and relief's which could be granted by the tribunal :

In Re. Dale & Carrinton Investment (P.) Ltd. v. *P. K. Prathapan* [2004] 122 Comp Cas. 161 (SC), it was held –

In the present the court was concerned with the propriety of issue of additional share capital by the Managing Director in his own favour. The facts of the case do not pose any difficulty particularly for the reason that the Managing Director has neither placed on record anything to justify issue of further share capital nor it has been shown that proper procedure was followed in allotting the additional share capital. Conclusion is inevitable that neither the allotment of additional shares in favour of Ramanujam was bonafide nor it was in the interest of the company nor a proper and legal procedure was followed to make the allotment. The motive for the allotment was malafide, the only motive being to gain control of the company. Therefore, in our view, the entire allotment of shares to Ramanujam has to be set aside.

Principle of Corporate democracy

On Removal of director without special notice

– *Manmohan Singh Kohli (Capt.)* v. *Venture India Properties P. Ltd.*, (2005) 123 Com cases 198 : 2005 CLC 1311 : (2004) 6 Comp LJ 452 (CLB)

  The dispatch of notice is not bad in law because it is sent from some other post office which is not situated near to the company's registered or working office.

  The removal of director without serving the notice u/s 284 is invalid and is an act of oppression & mismanagement. Consequently, the director shall be restored to his original position as director and all subsequent actions taken by the company in this regard would also be null and void.

– *B.V. Thirumalai* v. *Best Vestures Trading P. Ltd.*, (2004) 4 Comp LJ 519 (CLB)

  It is settled proposition of law that further shares could be issued only for the benefit of the company and not with a view to create a new majority, *even if the powers to issue shares is vested in the Board. If the purpose of allotment of shares is for upsetting the existing shareholding to the detriment of one group, then such an allotment of shares is to be held an act of oppression.*

  The procedure u/s 284 for the removal of director shall be followed:

  An extraordinary general meeting being conducted without a board meeting is invalid & the director removed at such meeting is invalid and he is entitled to receive the pending remuneration.

  If it is proved that a director is fooled by the other for resigning from the post of directorship shall be considered an act of oppression more so, when the company is a family company.

– *Naginder Singh Shiena* v. *R.S. Infrastructures Ltd.*, (2007) 139 Com Cases 246 : (2008) 86 SCL 90 (CLB)

  If it is established that the resolutions in the EOGM were passed with a view to oust the directors from the management of the company and take control of the affairs of the company, then, the same could be agitated in a petition under Sections 397/398 of the Act.

  In case of closely held companies, the removal of any shareholder from the board who has been associated with the company for long, could be considered to be an act of oppression and could be agitated in a petition under Sections397/398 of the Act.

On Removal of director without valid meeting

– *Badri Nath Galhotra* v. *Aanaam P. Ltd.*, (2007) 135 Com Cases (2007) 76 SCL 241 (CLB)

  If a director in a company in the nature of a quasi Partnership, is removed, it would amount to oppression Board meeting without the quorum is invalid.

Removal of Managing Director

– *SVT Spg. Mills P. Ltd.* v. *M. Palanisami*, (2009) 95 SCL 112 (Mad)

  Whether qualification shares are held by the director or not could be decided on evidence but right of the director could not be decided in maintainability of application.

- *Pooja Joshi* v. *Century gases & Petro Chemicals Ltd.*, (2004) 50 SCL 556 (CLB)

  Where a suit has been filed against the MD and in the meanwhile a compromise is arrived between the company and the MD and MD neither honors the terms of the compromise nor appears at the hearings, in such a situation the director remaining is entitled to manage and control the affairs of the company.

- *Mahendra Sahai v. Dhruv Theatres and Productions P. Ltd.,* (2004) 56 SCL 339 : (2005) 126 Com Cases 164 (CLB)

  If it is proved that the shareholding of the MD is fraudulently reduced then he shall be re-instated with his original shareholding, or if he is willing to part with shares, then the company should purchase the shares on valuation to be made by an independent valuer.

Removal of Promoter Director

- *Scholastica Antorny v. Azhimala Beach Resorts P. Ltd.*, (2007) 78 CLA 224 : (2007) 139 Com Cases 618 (CLB)

  The principle of legitimate expectation shall be applied for a promoter- director that it must form part of the board of directors of the Company and can't be removed merely because of not attending an AGM.

Legitimate expectation in joining company

- *Synchron Machine Tools P. Ltd. v. U.M. Suresh Rao*, (1994) 79 Com Cases 868 (Kar)

  If the affairs of the company are left to be controlled only by only two rival directors, deadlock in its affairs is bound to result so the aggrieved director shall part way with the shares of the company.

Direction for parting of ways on valuation

- *Surendra Goyal v. Nile Aqua faucets P. Ltd.*, (2008) 142 Com Cases 634 : (2008) 88 SCL 224 (CLB)

  In a situation where there are counter allegations by one against the other of causing loss to the company and of the other of sale of properties of the company inspite of the CLB restraining it by interim order. The aggrieved shareholder/director shall be directed to part way the shares of the company. The valuer for the purpose is to be appointed with the consensus of the parties or in the alternative a lumpsum amount acceptable to the petitioner may be paid by the respondents to the petitioner with the direction to the petitioner to go out of the company.

Allotment in violation of statutory provisions

- *BNS Steel Trading P. Ltd. v. Orissa Sponge Iron to Steel Ltd.*, (2010) 154 Com Cases 357 : (2010) 2 Comp LJ 425 : (2010) 96 CLA 199 (CLB)

  An allotment of shares in violation of sec.77(2) is not a ground of oppression and such allotment shall not be cancelled even if the shareholders of the company feel oppressed.

Issue of further capital and impropriety in rights issues

- *PIK Securities P. Ltd. v. United Western bank P. Ltd.*, (2001) 4 Comp LJ 81 : (2001) 44 CLA 184 : (2001) 33 SCL 671 (CLB-Del)

  As far as the need for additional capital is concerned, it is a managerial decision and a judicial forum, should not interfere with the decision of the Board except when the increase in the share capital is with an ulterior motive and not for the bonafide needs of the company, but, in the garb of raising capital, shares are issued either to consolidate one's position or with a view to create a new majority or to convert a majority into a minority. In such cases, a petition under section 397/398 can be maintained.

- *Satish Chandra Sanwalka v. Tinplate dealers Assn. P. Ltd.*, (2001) 3 Comp LJ 284 : (2001) 107 Com Cases 98 : (2001) 32 SCL 338 :(2001) 43 CLA 97 (CLB - Del)

  If an existing group of shareholders are not allotted any share in new allotment then such act is an oppressive one and the company shall be directed to transfer suitable number of shares in order to maintain their previous shareholding ratio.

- *Hardeep Kaur Thinlac Enterprises P. Ltd.*, (2004) 122 Com cases 944 : (2005) 57 SCL 459 (CLB)

  There is no illegality in making further issue of shares where the company needed money for cash payments. Also, the aggrieved shareholders whose shareholding has been reduced or disturbed by such allotment shall be given an option to part with their shares.

- *Ashok Kumar Oswal v. Panchsheel Textile Mfg. & Trading Co. P. Ltd.*, (2002) 110 Com Cases 800 : 2001 CLC 1236 : (2002) 38 SCL 252 : (2002) 48 CLA 274 : (2002) 3 Comp LJ 224 (CLB)

  Once it is proved that the additional issue of shares is done to gain control, then deemed knowledge and consent of the aggrieved shareholders taken earlier shall be immaterial and such a case is an oppressive one.

- *Dileep Makhija v. Arun Mittal*, (2003) 47 SCL 241: (2004) CLC 209 : (2004) 118 Com Cases 694 : (2004) 59 CLA 177 (Delhi)

  No petition a director shall be entertained to whom notice of meeting was not given, if he didn't object to the meetings held earlier.

Allotment of shares in family company

- *Navin Ramji Shah v. Simplex Engineering & Foundry Co. P. Ltd.*, (2007) 76 CLA 1 : (2007) 136 Com Cases 770 (CLB)

  In a family company, mere disturbance in the shareholding of existing shareholders is a valid ground of oppression and the Board may order for winding up of the company after considering the interests of the shareholders and the aggrieved shareholders shall be directed to part way the shares of the company and the valuation of shares to be made by an independent valuer.

- *Ashok K Jain v. Naprod Life Sciences P. Ltd.*, (2009) 151 Com Cases 212 : (2009) 92 CLA 148 (CLB)

  Even if the company is a family company, the rival shareholders shall not be allowed to enter into any settlement during the pendency of the civil suit and the Board appoints an administrator to safeguard the interest of the company and make the Board run the company effectively.

- *Amrit lal Seth v. Seth hotels P. ltd.*, (2009) 95 SCL 161 : (2010) 95 CLA 489 : (2009) 148 Comp Cas 651 (CLB)

  In a family company of only 4 directors, it is assumed that every director shall be knowing about new allotments and in case it is proved that the director remains unknown about the new allotments then laches shall be applied for filing of petition against the other directors.

Arbitration and relief

- *Das Lagerway Wind Turbines P. Ltd. v. Cynosure Investments P. Ltd.*, (2007) 80 CLA 211 (Mad)

  Arbitrator cannot grant relief claimed by person in company petition. The scope of the petition filed under Sections 397 and 398 is quite distinct from the scope of the arbitration clause contained in an agreement and reliefs claimed in the company petition cannot be granted by arbitrator and it can be granted by Company Law Board alone by virtue of Sections 397, 398, 402 and 403 of the Companies Act.

- *Sudershan Chopra (Smt.) v. Company Law Board*, (2004) 58 CLA 362 : (2004) 52 SCL 429 [P & H]

  Even if arbitration clause is provided in the articles of the company for any dispute among the shareholders, the Court's jurisdiction under Ss. 397 and 398 cannot stand fettered. The shareholder can file suit against the company in case of oppression. The statutory jurisdiction of the Company Law Board and the right of appeal against its orders cannot be ousted even by the consent of parties.

- *Airtouch International (Mauritius) ltd., v. RPG Cellular Investments and Holdings P. Ltd.*, (2004) 121 Com Cases 647 : 2004 CLC 987 : (2004) 53 SCL 1 (CLB)

  If there is dispute arose out of the shareholders agreement and such agreement provides for the arbitrator to handle the dispute , in such a case CLB shall not entertain the petition.

- *Premier Automobiles Ltd., v. Fiat India P. Ltd.*, (2007) 137 Com Cases 737 : (2006) 6 Comp LJ 595 : (2007) 77 SCL 38 (CLB)

  If in the shareholders' agreement that of joint venture, company is not a party, the company is only a party of the escrow agreement i.e. agreement related only to the safe custody of the share certificates and has nothing to do with the affairs of the company, the shareholders are allowed to file petition u/s 397.

- *Rajendra Kumar Tekriwal v. Unique Construction P. Ltd.* (2009) 147 Com Cases 737: (2008) 82 CLA 274 (CLB)

  The action of the Company and its Board of Directors in removing the shareholders of the company is illegal and is a matter covered under section 397 and can't be referred to arbitration.

S. 243 - CONSEQUENCE OF TERMINATION OR MODIFICATION OF CERTAIN AGREEMENTS

(1) Where an order made under section 242 terminates, sets aside or modifies an agreement such as is referred to in sub-section (2) of that section, –

(a) such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise;

(b) no managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company.

(1A) The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision:

Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

(1B) Notwithstanding anything contained in any other provision of Companies Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.]

Provided that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given a reasonable opportunity of being heard in the matter.

(2) Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) or sub-section (1A), and every other director of the company who is knowingly a party to such contravention, shall be punishable with fine which may extend to five lakh rupees.

RIGHT TO APPLY UNDER SECTION 241

244. (1) The following members of a company shall have the right to apply under section 241, namely: –

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause or clause (b) so as to enable the members to apply under section 241.

Explanation. – For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

APPLICATION OF CERTAIN PROVISIONS TO PROCEEDINGS UNDER SECTION 241 OR SECTION 245

246. The provisions of sections 337 to 341 (both inclusive) shall apply mutatis mutandis, in relation to an application made to the Tribunal under section 241 or section 245.

Rules : NCLT Rules, 2016

Some of the important rules w.r.t. above provisions are relevant to quote:

Rule 34. General Procedure. –

(1) In a situation not provided for in these rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice.

(2) The general heading in all proceedings before the Tribunal, in all advertisements and notices shall be in Form No. NCLT. 4.

(3) Every petition or application or reference shall be filed in form as provided in Form No. NCLT. 1 with attachments thereto accompanied by Form No. NCLT.2 and in case of an interlocutory application, the same shall be filed in Form No. NCLT. 1 accompanied by such attachments thereto along with Form No. NCLT. 3.

(4) Every petition or application including interlocutory application shall be verified by an affidavit in Form No. NCLT.6. Notice to be issued by the Tribunal to the opposite party shall be in Form NCLT-5.

Rule 64. Matter earlier dealt by Company Law Board.-

Notwithstanding anything contained in any other law for the time being in force, an original civil action or case arising out of the Act, or any other corresponding provision of the Companies Act, 1956 or Reserve Bank of India

Act, 1934 is filed or pending before the Company Law Board on the date on which the Tribunal is constituted, and the relevant provisions of the Act dealing with the Tribunal have been given effect, or the Company Law Board has been dissolved in pursuance of the provisions of the Act, then all the cases on such date pending with the Company Law Board or such Benches shall stand transferred to the respective Benches of the Tribunal exercising corresponding territorial jurisdiction as if the case had been originally filed in the Tribunal or its Bench to which it is transferred on the date upon which it was actually filed in the Company Law Board or its Bench from which it was transferred: Provided that the Tribunal shall consider any action taken under the regulations of the Company Law Board as deemed to have been taken or done under the corresponding provisions of these rules and the provisions of the Act, and shall thereupon continue the proceedings, except in a case where the order is reserved by the Company Law Board or its Bench and in such a case, the Tribunal shall reopen the matter and rehear the case as if the hearing had not taken place:

Provided further that the Tribunal is at liberty to call upon the parties in a case to produce further evidence or such other information or document or paper or adduce or record further depositions or evidence as may deem fit and proper in the interest of justice.

(1) It shall be lawful for the President or such Member to whom the powers are so delegated, to provide that matters falling under all other sections of the Act, shall be dealt with by such Benches consisting of one or more members as may be constituted in exercising of such power as enshrined in the Act: Provided that matters pending before the Principal Bench of the Company Law Board as on the date of constitution of Tribunal shall continue and be disposed of by a bench consisting of not less than two Members of the Tribunal having territorial jurisdiction.

(2) It shall be lawful for the Tribunal to dispose of any case transferred to it wherever the Tribunal decides that further continuance of such application or petition transferred before the Tribunal shall be an unnecessary proceeding on account of changes which have taken place in the Act either upon an application filed by either of the parties to the proceedings or *suo motu.*

A fresh petition or an application may also be filed in Form NCLT 1 corresponding to those provisions of the Act, if both the parties thereto so consent with the approval of the Tribunal while withdrawing the proceedings as already continued before the Company Law Board and serve a copy of the petition on the parties thereto including the Central Government, Regional Director, Registrar of Companies, Official Liquidator or Serious Fraud Investigation Office, as the case may be, as provided in the Act, in the manner as provided under Part III.

(3) Upon an application to the Tribunal if the permission is granted to file a petition or an application in physical form, then the same shall be filed accompanied with the documents or papers to be attached thereto as required to prove the case subject to the provisions of the Act, and rules hereto.

(4) The same procedure shall also apply to other parties to application or petition for filing reply or counter thereto.

(5) Notwithstanding the above and subject to section 434 of the Act, the Tribunal may prescribe the rules relating to numbering of cases and other procedures to be followed in the case of transfer of such matters, proceedings or cases. 65. Petition or Application under

Rule 81. Application under section 241. –

(1) An Application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act, shall be filed in the Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.

(2) Where an application is presented under section 241 on behalf of any members of a company entitled to apply under sub-section (1) of the said section, by any one or more of them, the letter of consent

signed by the rest of the members so entitled authorising the applicant or the applicants to present the petition on their behalf, shall be annexed to the application, and the names and addresses of all the members on whose behalf the application is presented shall be set out in a schedule to the application, and where the company has a share capital, the application shall state whether the applicants have paid all calls and other sums due on their respective shares.

(3) A copy of every application made under this rule shall be served on the company, other respondents and all such persons as the Tribunal may direct.

Rule 82. Withdrawal of Application filed under section 241.

(1) An application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act, shall not be withdrawn without the leave of the Tribunal.

(2) An Application for withdrawal under sub-rule (1) shall be filed in the Form NCLT-9.

FORM NO. NCLT. 1

[see rules 34, 64, 66, 67, 68, 69, 70, 71, 73, 74, 75, 77, 78, 79, 80, 80A, 81, 83, 86 and 87]

Columns required for filing of Original Application / Reply / Rejoinder / Interlocutory Application or filing of additional documents under directions of the Bench

i. **Details of Original Application / Reply / Rejoinder / Interlocutory Application**

Particulars of the Petitioner / Applicant / Respondent and state whether company, whether petitioner or not.

(Name, description, father's / husband's name, occupation, capacity, i.e. qua shareholder, qua depositor and address)

ii. **Jurisdiction of the Bench:**

The petitioner declares that the subject-matter of the petition is within the jurisdiction of the Bench.

iii. **Limitation:**

(If applicable) The petitioner / applicant further declares that the petition is within the limitation laid down in section .... of the Companies Act, 2013 (where applicable)

iv. **Facts of the case are given below:**

(Give here a concise statement of facts in a chronological order, each paragraph containing as nearly as possible a separate issue, fact or otherwise.)

v. **Relief(s) sought.**

In view of the facts mentioned above, the petitioner/applicant / respondent prays for the following relief(s):

(Specify below the relief(s) sought explaining the ground for relief(s) and the legal provisions (if any) relied upon)

vi. **Particulars of Bank draft evidencing payment of fee for the petition or application made:**

Branch of the Bank on which drawn:

Name of the issuing branch:

Demand Draft No______________

Date_______________

Amount Rs_____________

(Signature/Signature of Authorised signatory)

Date:

Place:

FORM NO. NCLT. 9

[see rule 72, 76, 82, 84, 88 and 154 and also General Form for all purposes if no specific form is prescribed under these rules and Forms]

[HEADING AS IN FORM NCLT. 4]

Company Petition No ___ of 20 ___

Details of Application/ Petition:

Particulars of the applicant/ petitioner/appellant:

i. Name of the applicant/ petitioner/ appellant

ii. Address of registered office of the applicant/ petitioner/ appellant

iii. Address of service of all notices

iv. Telephone/Fax Number and e-mail address, if any Particulars of the respondent(s)

v. Name of the respondent(s)

vi. Office address of the respondent(s)

vii. Address of respondent(s) for service of all notices

viii. Telephone/Fax Number and e-mail address, if any.

Application /Petition/ Appeal in the form of affidavit under Section of the Act for..................

I, ...solemnly affirm and say as follows:

1. **I am the Managing Director or Chairman of the Board of Directors/a director/ .... Of the above named company, and I have been a of the company since......... 201...... [the capacity in which the deponent swears to the affidavit should be set out.]**

2. **I have read the petition now shown to me and state that the statements made in paragraph1 to thereof are correct and true to my knowledge.**

4. **Facts of the order against which appeal or review is filed.**

5. **The facts of the case are given below: (give here a concise statement of facts and other grounds in a chronological order, each paragraph containing as neatly as possible as separate issue, fact or otherwise).**

6. **Jurisdiction of the Tribunal: The applicant/ petitioner/ appellant declares that the matter of application/petition/ appeal falls within the jurisdiction of the Tribunal.**

7. **Limitation.- The applicant/ petitioner/ appellant further declares that the application/petition/ appeal is within the limitation as prescribed in the provision of section read with section 433 of the Act.**

8. **Matter not pending with any other Tribunal etc. - The applicant/ petitioner/ appellant further declares that the matter regarding with this application/ petition/ appeal has been made is not pending before any Tribunal of law or any other authority or any other Tribunal.**

9. **Particulars in respect of the fee paid in terms of the Schedule of Fees of these rules.-**
    1. Amount of fees
    2. Name of the Bank on which Demand Draft is drawn or Online Payment is made
    3. Demand draft number.
10. **Details of Index.-** An index containing the details of the documents to be relied upon is enclosed.
11. **List of enclosures.-**
12. **It is therefore prayed that directions may please be given:**
    1. Relief(s) sought.- In view of the facts mentioned in paragraph 5 above, the applicant/ petitioner/ appellant prays for the following relief(s) (Specify below the relief(s) sought explained the grounds for relief(s) and the legal provisions, if any, relied upon).
    2. Interim order, if prayed for.- Pending final decision of application/ petition/ appeal, the applicant/ petitioner/ appellant prays for the following interim relief: (Give here the nature of the interim relief prayed for with reasons)

Dated this ____day of _________ 20____

(Signature of the applicant/ petitioner/ appellant)

Solemnly affirmed before me at on this (month) ____day of _______20____

(signature)

Application for Class Actions

Shareholders activism which means an active participation of shareholders in all the aspects of good corporate governance and fighting against the deceitful and incorrect acts of a company is an evolving term in India. As a part of the overhaul of the corporate governance norms, the Government of India enacted the Companies Act 2013 (“2013 Act”) which brought in a slew of changes. The concept of Class Action Suits is one of the many improvement introduced by the 2013 Act vide Section 245.

Individual shareholders generally do not take legal action against a company, either on account of lack of enough motivation or finding it economically unaffordable, or because the law requires a certain percentage of shareholding for proceeding against a company. Thus, small and retail investors generally find it difficult to be heard and instead their grievances are redressed either from the company or courts in general. Class action suits seem to provide an answer to this problem by bringing together similar individuals under a single lawsuit, thereby supporting the cost of litigation and inspiring the required confidence. Thus, Class action is simply filing a law suit in a larger group instead of individual suits where there are numerous persons having the same interest in that suit.

Types of Class Action Suits

Broadly in the global context, there are four kinds of class action suits that can be brought against a company:

a. **Product liability/Personal Injury Class Actions:** Such law- suits are brought when a defective product or deficient service harms many people, for example, a drug with harmful side effects, or causing “mass accident”.

b. **Consumer Class Actions:** Most common type of class action suits, these class actions suits are generally brought when a company’s systematic and illegal practices harm a group of consumer, such as violation of consumer protection laws, illegal charges and penalties etc.

c. **Employment Class Actions**: Brought on behalf of employees of a company for contravention of the Labor laws, such as unpaid overtime, safety violations, workplace discrimination among others.

d. **Securities Class Actions**: Securities class actions are lawsuits brought on behalf of a group of investors who have been injured as a result of a improper conduct, corporate or otherwise by the management of a company. It includes all illegal practices ranging from misstating earnings to concealing or misrepresenting risks and all unethical practices.

Two factors are always present in every class action suit (pre- requisites) are:

1. The issues in dispute are common to all the members of the class (group), and
2. The persons affected are so large in number that it is impracticable to bring them all before the court.

Collective actions recognized under Indian Laws other than the Companies Act, 2013

Provisions such as class action suits allowing parties to represent other aggrieved persons in a representative capacity are set out in the following Indian Laws:

(a) Civil Procedure Code, 1908 (“CPC”)

(b) Consumer Protection Act 1986 (“CPA”)

(c) Industrial Disputes Act 1947 (“IDA”)

(d) Competition Act 2002 (“Competition Act”)

(e) Public Interest Litigation.

Actions under the CPC

Actions provided for under Order 1, Rule 8 of the CPC can be filed by the concerned persons before a court by seeking the permission of the court or by the direction of the court. The action must be filed before the appropriate court with requisite territorial and pecuniary jurisdiction. While territorial jurisdiction is determined based on (among others) cause of action and/or locations of defendants, pecuniary jurisdiction is based on the valuation of the lawsuit, and differs across different states in India.

The provisions regarding the filing of representative actions are set out under Order 1, Rule 8 of the CPC. Under this rule, an individual or group of individuals can file an action for the benefit of all persons interested in the subject matter of the litigation. However, to bring an action the following conditions must be met:

(a) Numerous parties must be present in the representative action.

(b) All parties must share the same interest (commonality of interest).

(c) The action is maintainable only upon seeking prior permission of the court.

(d) On permission being given by court, the court must issue notice to all the interested parties.

(e) No part of the action can be withdrawn or a compromise recorded unless notice is given to all interested persons.

(f) If the person suing or defending in representative capacity is not acting with due diligence, the court can substitute in his place any other person with the same interest in the representative action.

Consequently, a decree passed by the court in a representative action will be binding on all persons on whose behalf, or for whose benefit, the suit was instituted, or defended (as the case may be) (*Order 1 Rule 8(6), CPC*).

In addition to Order 1 Rule 8, the CPC has another provision relating to collective action. Section 91 empowers two or more persons to file a suit with the permission of the court to seek a declaration and injunction or any such other relief against public nuisance or other wrongful act affecting, or likely to affect the public. Such an action can be brought even if no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

In a representative suit there are numerous plaintiffs with different complaints and claims represented by one. In this one case is not taken as a base whereas each and every case or claim is discussed while deciding this particular representative suit. However the Scope of Order 1 Rule 8 of CPC is much wider than the one specified u/s. 245 of the 2013 Act.

Actions under the CPA

The CPA seeks to provide simple and speedy redressal to consumer disputes by establishing quasi-judicial machinery at district, state and national levels. Depending on the value of the claim, a complaint under the CPA can be filed before the:

(a) District Forum (for claims of up to INR 20 lakhs). This is a consumer dispute redressal forum established by the State Government in each district of the State by notification.

(b) State Commission (for claims of between INR 20 lakhs and INR 1 crore). This is a Consumer Disputes Redressal Commission established by the State Government in the State by notification.

(c) National Commission (for claims of more than INR 1 crore). This is the Consumer Disputes Redressal Commission established by the Central Government by notification.

Under section 12(1)(c) of the CPA, one or more consumers with the same interest (as well as consumers acting on behalf of, or for the benefit of all consumers) can file a complaint with the District Forum in relation to:

(a) Any goods sold or delivered, or agreed to be sold or delivered.

(b) Any service provided, or agreed to be provided.

(c) Such a complaint can only be filed with the permission of a District Forum.

Actions under the Competition Act

Applications made under section 53(N)(1) of the Competition Act must be filed before the Competition Appellate Tribunal (COMPAT). The Competition Act recognises the need to compensate parties for loss or damage caused as a result of anti-competitive conduct. The Competition Act also recognises that the conduct of parties may affect numerous parties for whom an individual claim may not be viable, accordingly, it provides for class actions as a form of redressal for numerous parties affected by anti-competitive conduct. Where numerous persons with the same interest have suffered loss or damage caused by the anti-competitive conduct of an enterprise (upheld by a decision of the Competition Commission of India (CCI) or the COMPAT) one or more such persons as well as persons acting for and on behalf of all persons can make an application to the COMPAT for the recovery of compensation for any loss or damage suffered (section 53N(4), Competition Act).

However, an application for compensation can only be made to the COMPAT either:

(a) When the CCI or the COMPAT has determined in the prior proceedings that there has been a violation of the provisions of the Competition Act.

(b) Where section 42A or section 53Q(2) of the Competition Act apply. These provisions provide a right to make an application for compensation when parties have suffered damage as a result of an enterprise contravening directions from the CCI or COMPAT.

In such cases, the provisions of Order 1, Rule 8 of the CPC apply subject to the following modifications:

(a) Every reference therein to a lawsuit must be construed as a reference to the aforementioned application to the COMPAT.

(b) Every reference to a decree must be construed as a reference to the order of the COMPAT.

Public Interest Litigation

Public Interest Litigation ("PILs") in common parlance means a legal action filed for the interest of general public. It is a tool for safeguarding the socio economic rights and Judiciary has used it as a weapon against the wrongdoers. Class Action has been brought up on the same lines but there are some key differences between the two of them. Class Action can be filed against any entity including private entities whereas PILs can only be filed against State or Public Authorities in High Court or Supreme Court. Representative in the Class Action Suit must suffer an injury or have interest in the claim whereas there is no such requirement in PIL for the plaintiff.

Industrial disputes/collective bargaining under the IDA

Representative actions through collective bargaining can be said to be permitted under the IDA, as industrial jurisprudence is based on class- action or representative litigation. The IDA permits collective bargaining by employees/workers as represented by their unions (which to some extent is an embodiment of the common law principles of representative litigation). The concept was evolved to enable poor workmen to unite together and press their demand collectively in order to confront a powerful employer.

Class action suits under the Companies Act, 2013 and NCLT Rules

Section 37 of the 2013 Act also provides for a "securities class action". This provision provides that a lawsuit can be filed, or any other action may be taken by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus under the following provisions of 2013 Act:

- Section 34 (criminal liability for misstatements in a prospectus).
- Section 35 (civil liability for misstatements in a prospectus).
- Section 36 (punishment for fraudulently inducing persons to invest money).

A minimum number of members required to file such a suit/alternative action has not yet been prescribed.

Persons eligible to launch class action suits

Only members and depositors can bring class action suits.

Section 2(55) of the Companies Act defines "member", in relation to a company, as any of the following:

- a subscriber to the memorandum of the company who is deemed to have agreed to become member of the company, and on its registration was entered as member in its register of members;
- a person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
- a person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.

Rule 2(d) of Companies (Acceptance of Deposits) Rules 2014 defines a depositor to mean either:

- a member of the company who has made a deposit with the company in accordance with section 73(2) of the 2013 Act;

- a person who has made a deposit with a public company in accordance with section 76 of the 2013 Act.

As per Section 245(3)(i), the requisite numbers of members who can maintain a Class Action are specified as under:

(a) In the case of a company having a share capital, more than one hundred members of the company or such percentage of the total number of its members as may be prescribed, whichever is less; or any member or members holding more than such percentage of the issued share capital of the company as may be prescribed.

(b) In case of a company not having share capital more than one- fifth of the total number of its members.

As per Section 245(3)(ii),the number of depositors required to file class action are more than 100 in number or more than such percentage of the total number of depositors as may (be prescribed, whichever is less, or (any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

Orders that may be sought from the Tribunal

Section 245(1) stipulates that the following orders may be sought from the Tribunal in a class action suit:

(a) To restrain the company from committing an act which is ultra vires the articles or memorandum of the company.

(b) To restrain the company from committing breach of any provision of the company's memorandum or articles.

(c) To declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by misstatement to the members or depositors.

(d) To restrain the company and its directors from acting on such resolution.

(e) To restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force.

(f) To restrain the company from taking action contrary to any resolution passed by the members.

(g) To claim damages or compensation or demand any other suitable action.

(h) To seek any other remedy as the Tribunal may deem fit.

Persons against which action class actions can be filed

Class actions may be filed against:

(i) The company or its directors;

(ii) The auditor;

(iii) Any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful actor conduct or any likely act or conduct on his part.

Factors taken into account by NCLT

According to Section 245(4), while considering the application, the NCLT shall take into account:

(1) whether the applicants are acting in good faith;

(2) evidence as to the involvement of any person other than the directors or officers of the company;

(3) whether the applicants could have pursued the action in their own and individual rights;

(4) evidence as to the views of the members or depositors who have no personal interest, direct or indirect in the matter in question;

(5) whether the cause of action is an act or omission that is yet to occur can be authorized by the company before it occurs or ratified by the company before it occurs;

(6) whether the cause action is an act or omission that has already occurred can be ratified by the company.

Further the National Company Law Tribunal Rules, 2016 notified on July 21, 2016 (**“NCLT Rules”**) stipulates that, in addition to the provisions of sub-section (4) of section 245 of the 2013 Act, the Tribunal may, while considering the admissibility of an application for class action take into account the following:

(a) whether the class has so many members that joining them individually would be impractical, making a class action desirable;

(b) whether there are questions of law or fact common to the class;

(c) whether the claims or defences of the representative parties are typical of the claims or defences of the class;

(d) whether the representative parties will fairly and adequately protect the interests of the class.

Place of Institution

Section 245(1) provides that all class action suits shall be instituted in the Tribunal.

Section 245(1) of the Companies Act provides that class action lawsuits initiated under the Companies Act must be initiated before the National Company Law Tribunal (NCLT). The Ministry of Corporate Affairs (MCA) *vide* a notification dated 1 June 2016 has constituted the National Company Law Tribunal (NCLT) and its appellate authority, the National Company Law Appellate Tribunal (NCLAT) with effect from such date.

Costs and Expenses

Costs and expenses with regard to class action suits shall be borne by the company and the person responsible for the “onerous act”. It is pertinent to note here that the section casts the liability to bear costs of application upon the person who does or is responsible for such act.

Section 245(5) of the Companies Act, 2013, states that if the application filed is admitted, the Tribunal shall issue a public notice to all the members of the class by publishing the same and shall consolidate all similar applications prevalent into a single application. This section states that two class action applications for the same cause of action shall not be allowed and that the cost for derivative suit shall be borne by the company or the person responsible for the oppressive act.

Section 245(6) of the Companies Act, 2013 makes the decision of the NCLT binding on the company and all its members, depositors, auditors, consultant, advisor or any person associated with the company.

Consequences of non-compliance with the orders of the Tribunal

In the event of non-compliance of the order passed by the Tribunal under Section 245(7):

(a) A company shall be punishable- with fine which shall not be less than 5 lakh rupees but which may extend to 25 lakh rupees; and

(b) every officer of the company who is in default can be punished with imprisonment for a term upto 3 years and imposed a fine of not less than Rs.25,000 extendable upto Rs.1 lakh.

PROCEDURAL ASPECTS RELATING TO CLASS ACTION SUIT (AS PER NCLT RULES, 2016)

Right to apply under section 245

Rule 84 of the NCLT Rules,2016 deals with right to apply under section 245. As per this rule:

(1) An application under sub-section (1) of section 245, read with sub-section (3) of section 245 of the Act, shall be filled in Form NCLT-9.

(2) A copy of every application under sub-rule (1) shall be served on the company, other respondents and all such persons as the Tribunal may direct.

(3) In case of a company having a share capital, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be -

  (i) (a) at least five per cent. of the total number of members of the company; or

  (b) one hundred members of the company,

  whichever is less; or

  (ii) (a) member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company;

  (b) member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.

(4) The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be -

  (i) (a) at least five per cent. of the total number of depositors of the company; or

  (b) one hundred depositors of the company,

  whichever is less; or;

  (ii) depositor or depositors to whom the company owes five per cent. of total deposits of the company.

Rule 85 of NCLT Rules deals with conducting a class action suit. While considering the admissibility of an application under Section 245 of the 2013 Act, NCLT may take into account certain factors which are explained earlier.

Rule of opt-out

Rule 86 of NCLT Rules deals with opting out of class action suit and stipulates that:

(1) A member of a class action under section 245 of the Act is entitled to opt-out of the proceedings at any time after the institution of the class action, with the permission of the Tribunal, as per **Form No. NCLT-1.** A copy of Form NCLT-1.

(2) A class member who receives a notice under Section 245(5)(a) of the 2013 Act shall be deemed to be the member of a class, unless he expressly opts out of the proceedings, as per the requirements of the notice issued by the Tribunal.

(3) A class member opting out shall not be precluded from pursuing a claim against the company on an individual basis under any other law, where a remedy may be available, subject to any conditions imposed by the Tribunal.

Publication of notice

Rule 87 of NCLT Rules deals with publication of Notice and stipulates that:

(1) For the purposes of Section 245(5)(a) of the 2013 Act, on the admission of an application filed under Section 245(1), a public notice shall be issued by the Tribunal as per **Form No. NCLT-13** to all the members of the class by-

  (a) publishing the same within seven days of admission of the application by the Tribunal at least once in a vernacular newspaper in the principal vernacular language of the State in which the registered office of the company is situated and at least once in English in an English newspaper that is in circulation in that State;

  (b) requiring the company to place the public notice on the website of such company, if any, in addition to publication of such public notice in newspaper.

The Rules also prescribe that the aforesaid notice is also required to be placed on the websites of NCLT and the Ministry of Corporate Affairs, the concerned Registrar of Companies and in respect of a listed company on the website of the concerned stock exchange where the company has any of its securities listed, until the application is disposed of by the NCLT.

(2) The date of issue of the newspaper in which such notice appears shall be considered as the date of serving the public notice to all the members of the class.

(3) The public notice shall, *inter alia*, contain the following-

  (a) name of the lead applicant;

  (b) brief particulars of the grounds of application;

  (c) relief sought by such application;

  (d) statement to the effect that application has been made by the requisite number of members/ depositors;

  (e) statement to the effect that the application has been admitted by the Tribunal after considering the matters stated under sub-section (4) of section 245 and these rules and it is satisfied that the application may be admitted;

  (f) date and time of the hearing of the said application;

  (g) time within which any representation may be filed with the Tribunal on the application;

  (h) the details of the admission of the application and the date by which the form of opt out has to be completed and sent as per Form NCLT-1 and shall be accompanied with such documents as are prescribed and such other particulars as the Tribunal thinks fit.

(4) The cost or expenses connected with the publication of the public notice under this rule shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act in case order is passed in favour of the applicant.

Limitation

Unless otherwise provided for by specific statutes, the limitation periods in India are governed by the Limitation Act 1963. While different causes of actions under the Code of Civil Procedure have different limitation periods, in most cases the limitation period is three years. The provisions of the Limitation Act apply to proceedings or appeals under the 2013 Act made to the NCLT or Appellate Tribunal.

The 2013 Act and the Limitation Act do not provide for a specific period within which a specialised class action for securities litigation under section 245 must be made. However, Article 137 of the schedule to the Limitation Act prescribes a maximum period of three years for a cause of action for which no specific period is prescribed. Accordingly, the limitation period for such actions will be deemed to be three years (however, this remains untested).

APPLICATION FOR COMPOUNDING

Meaning of Compounding

Compounding of Offence is not defined under Companies Act, 1956/ Companies Act, 2013, but as per **Black's Law Dictionary,** "Compound" means "to settle a matter by a money payment, in lieu of other liability".

Hence, taking a cue from the above definition, compounding of offence may be sum up as a judicial settlement mechanism whereby the default is made good by paying the penalty in lieu of undergoing consequences of lengthy prosecution for the offence committed.

Therefore, compounding crime consists of receipt of some consideration (termed as a compounding fee) in return for an agreement not to prosecute one who has committed an offence/default of technical in nature which enables the defaulters to avail peace and honorable discharge and avoid cumbersome trial.

Hence, when compounding is done, the prosecution is converted into fine i.e. condonation of prosecution by imposing penalty.

Nature of Offences which can be Compounded

Section 441 of the Companies Act 2013 classifies Offences/ defaults which are punishable with fine only or with imprisonment or fine or both, can be compounded either by the National Company Law Tribunal, Regional Director or any other officer authorised by the Central Government.

In other words, the offences, which are punishable with imprisonment only or imprisonment and fine, cannot be compounded.

The Power of compounding has been mentioned under section 441 of Companies Act, 2013

The provision of Section 441 of Companies Act, 2013 as are relevant for our purpose, are reproduced below:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under Companies Act, 2013 (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by—

(a) the Tribunal; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed twenty-five lakh rupees, by the Regional Director or any officer authorised by the Central Government, on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify:

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account:

Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under Companies Act, 2013.

(2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation.– For the purposes of this section,–

(a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;

(b) "Regional Director" means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

(3) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.

(b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(4) The Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order.

Jurisdiction for Compounding of Offences

The power of compounding which is vested with National Company Law Tribunal/Regional Director/ Person authorized by Central Government is categorized in a following arrangement:

- If the **fine does not exceed Rs. 25 lakhs,** the offence can be compounded by the Regional Director or any other officer as may be authorized by the Central Government;
- If the **offence is punishable with fine exceeding Rs 25 lakhs**, the same can be compounded by the National Company Law Tribunal; and,

Application for Compounding can be filled in e-form **GNL-1.**

Procedure for Compounding Of Offence

- Prepare the compounding application alongwith the following documents:
- Affidavit verifying the application
- Memorandum of appearance or Power of Attorney
- Copy of notice from RoC if any
- Other necessary documents
- File e-form GNL-1
- Joint application by the Company and Officer in default can be made
- Based on the quatum of penalty, ROC will forward the application to RD or NCLT
- Passing of order by RD or NCLT
- File e-form INC 28 for intimation of Order.

Specimen of Application/Petition for Compounding of Offence under Companies Act, 2013

APPLICATION/PETITION

BEFORE THE ....

COMPANY PETITION NUMBER...........2023

IN THE MATTER OF SECTION 441 OF THE COMPANIES ACT, 2013

(For the offence committed under Section _______ of the Companies Act, 2013)

AND

IN THE MATTER OF:

COMPANY NAME, HAVING ITS REGISTERED OFFICE AT ADDRESS

.........PETITIONER No. 1

AND

.........................., DIRECTOR, S/O MR. ...., **R/O** ....

.........PETITIONER No. 2

INDEX OF DOCUMENT(S)

S. No.	PARTICULARS	ANNEXURE NO.	PAGE NO.
1.	Petition under Section 441 of the Companies Act, 2013.	-	
2.	Affidavits verifying Petition	Annexure	
3.	Relevant annexures as per the circumstances of the case.	Annexure	

FOR COMPANY	**PETITIONER NO. 2**
(NAME)	____________________
DIRECTOR	**(NAME)**
DIN:	**(DESIGNATION)**
(EMAIL ID)	**(RESIDENTIAL ADDRESS)**
(CONTACT NO)	**(EMAIL ID)**
	(CONTACT NO)

BEFORE THE ....

COMPANY PETITION NUMBER...........2023

IN THE MATTER OF SECTION 441 OF THE COMPANIES ACT, 2013

(For the offence committed under Section .... of the Companies Act, 2013)

AND

IN THE MATTER OF:

COMPANY NAME, HAVING ITS REGISTERED OFFICE AT ADDRESS

.........PETITIONER No. 1

AND

............................, **DIRECTOR, S/O MR.** ...., **R/O** ....

.........PETITIONER No. 2

PETITION UNDER SECTION 441 OF THE COMPANIES ACT, 2013 FOR COMPOUNDING OF OFFENCE UNDER SECTION .... **OF THE COMPANIES ACT, 2013 ("ACT")**

The Humble Petition of the petitioners above named most respectfully showeth:

I. PARTICULARS OF THE COMPANY:

1. **Company** (hereinafter referred to as the "**COMPANY**") was incorporated as an .... vide certificate of incorporation issued by the Registrar of Companies.
2. The registered office of the Company, at present, is situated ....
3. The present Authorized Share, Issued, Subscribed and Paid-up Capital of the Company is Rs. .... (Rupees ....) only divided into .... Shares of Rs. .... (Rupees ....) each.
4. The Company is carrying on the following business-

   "..........................."

Certified true copy of Certificate of Incorporation, Memorandum and Articles of Association of the Company is annexed herewith and Marked as **ANNEXURE-1.**

II. PARTICULARS OF THE PETITIONER(S):

The Petitioner No. 1 is the Company and its particular are mentioned in ***Para 1*** above. Petitioner No. 2 is the Director of the Company. The detailed particulars of the above said Petitioner(s) are mentioned in the affidavit(s) verifying this Petition, which are placed as **ANNEXURE-2.**

III. JURISDICTION:

The petitioner(s) declares that the subject matter of the petition is within the jurisdiction of the ROC, ... and RD (region) NCLT .... (bench), ... The jurisdiction has been determined on the basis of the Registered office of the Company and provisions of Section 441 of the Companies Act, 2013, reference to which, the Registrar has to forward the Application for compounding before the appropriate forum, as he deems fit.

IV. LIMITATION:

The Petitioner(s) are filing this petition within the limitation period prescribed under the provisions of the Companies Act, 2013 for compounding of offence under section 441 of the Companies Act, 2013.

V. FACTS OF THE CASE ARE:

1. The Petitioners submits that ....(hereinafter referred to as “Company”) i.e. the petitioner no. 1 was incorporated on .... under the provisions of the Companies Act, 2013 under the jurisdiction of Registrar of Companies, ..., and the other petitioners i.e. Petitioner No. 2 is the Director of Company, it has duly complied with all compliances applicable on it under various provisions of the Companies Act, 2013 and rules made there-under, in timely manner.
2. The Petitioners further submits before the Hon’ble Adjudicating Authority that they have .... has mentioned and alleged the company and its all directors and manager for the non-compliance of .... of the Companies Act, 2013 read with ....
3. The Petitioners further submits that in the said ....
4. The petitioners further submit before the Hon’ble Adjudicating Authority that said non-compliance has happened inadvertently ....
5. The petitioners further submit before the Hon’ble Adjudicating Authority that the Company **HAS MADE GOOD OF THE DEFAULT** so happened by ....
6. The Petitioners further submits that the company and its board has already identified Mr. ...., i.e. the petitioner no. 2 as the authorized person for the adherence of all the compliances under prescribed laws including the Companies Act, 2013 and therefore onl petitioner no. 2 has to be considered as the **‘Officer in default’.** The List of officers in default and list of Signatories of the Company has been attached herewith and marked as **Annexure-.........**
7. The Petitioners further submits before this Hon’ble Authority that ....
8. Since the above contravention of Section .... of the Companies Act, 2013 is compoundable in terms of Section 441 of the Companies Act, 2013, and is a onetime offence, the Petitioner(s) hereby are making a Suo Motto petition for compounding the above contravention.

9. The Petitioner No. 1 has taken–up the matter relating to default of the provisions of Section .... of the Companies Act, 2013 for moving the petition under Section 441 of the Companies Act, 2013 at the Board Meeting held on ...., and has also authorized .... as its authorized representative.

10. The Petitioner No. 2 has also executed the power of attorney in favor of ...., to act as their legal representative and to take necessary action in respect to present matter.

    (A Copy of said Board Resolution dated ...., power of attorney(ies) alongwith Memorandum of Appearance of .... showing his acceptance has been annexed herewith and marked as **Annexure-.......**)

11. The petitioner(s) hereby declare that the officer(s) in default in respect of above said non-compliance is the petitioner no. 2 only.

VI. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY COURT:

The Petitioner(s) further declares that they had not filed any application, writ petition or suit regarding the matter in respect of which this petition has been made, before any court of law or any other authority or any other bench of the Board / NCLT and no such application, writ petition or suit is pending before any of them. The Petitioners further submit(s) that prosecution may/may not have been launched in the court in respect of the subject matter of this Application against the Company and its officers in default as on the date of filing of this application, but there is no such communication made to company and its any officer in this regard and it is not there in their knowledge if any such prosecution has been filed. The Petitioners are moving this application in good faith and wishes to get the offence compounded.

VII. GROUND OF RELIEF AND RELIEF (S) SOUGHT:

GROUNDS OF RELIEF:

1. As mentioned ***in the para V of the*** petition, the Company was not able to comply with the provisions of section .... of the Companies Act, 2013 due to ...., and inadvertently.
2. In subsequent years, the Company has taken all reasonable steps to ensure that the provisions contained in section .... of the Companies Act, 2013 and have duly complied.
3. That the default occurred is due to inadvertence which has ultimately been regularized and made good and, therefore, the offence under section .... of the Companies Act, 2013 deserves to be compounded.
4. That the Petition has been made bona-fide and in the interest of justice and, therefore, this is a fit case for Hon'ble Regional Director/NCLT to exercise its discretionary power in granting relief to the Company and other Petitioner(s) by compounding the Offence.
5. That the Petitioner(s) have already, on their part, taken all reasonable steps in order to ensure that the default is not committed in future.
6. The Petition is made bona-fide and in the interest of the Law and no body shall be prejudiced by the compounding of the offences under section .... of the Companies Act, 2013. This may be taken as just and equitable ground for taking a lenient view and compounding of the offence.
7. The Company is suo-moto filing an application under section 441 for compounding of an offence committed section .... of the Companies Act, 2013.

8. The Petitioners state that the tentative fee payable from the date of ocurrence of violation/ offense till the date of making the offense/violation good (.................. days) is INR ....

RELIEF (S) SOUGHT:

In view of the facts mentioned above in above paragraph, the Petitioner(s) respectfully prays your Honor that:

(a) Offence committed by the Petitioner(s) on account of violation of section .... of the Companies Act, 2013 be compounded.

(b) Such further order or orders be made, as the Hon'ble Board may deem fit and proper.

VIII. INTERIM ORDER, IF ANY PRAYED FOR: None

IX. PARTICULARS OF THE BANK DRAFT: **N.A.**

FOR PETITIONER NO.1	**PETITIONER NO. 2**
....	....
(NAME)	**(NAME)**
DIRECTOR	**(DESIGNATION)**
DIN:	**(RESIDENTIAL ADDRESS)**
(EMAIL ID)	**(EMAIL ID)**
(CONTACT NO)	**(CONTACT NO)**

X. LIST OF ANNEXURES(S):

S. No.	PARTICULARS	ANNEXURE NO.	PAGE NO.
1.	Petition under Section 441 of the Companies Act, 2013.	-	
2.	Affidavits verifying Petition	**Annexure**	
3.	Relevant annexures as per the circumstances of the case.	**Annexure**	

FOR COMPANY	**PETITIONER NO. 2**
(NAME)	____________________
DIRECTOR	**(NAME)**
DIN:	**(DESIGNATION)**
(EMAIL ID)	**(RESIDENTIAL ADDRESS)**
(CONTACT NO)	**(EMAIL ID)**
	(CONTACT NO)

ANNEXURE

BEFORE THE ………………………………………………

COMPANY PETITION NUMBER ……….. 2023

IN THE MATTER OF SECTION 441 OF THE COMPANIES ACT, 2013

(For the offence committed under Section ……………………….. **of the Companies Act, 2013)**

AND

IN THE MATTER OF:

COMPANY NAME, HAVING ITS REGISTERED OFFICE AT ADDRESS

………PETITIONER No. 1

AND

……………………**, DIRECTOR, S/O MR.** ………………………..**, R/O** ………………………. ……………………………………………………………… …………….

………PETITIONER No. 2

AFFIDAVIT VERIFYING PETITION

I, ……………………….., Director of ……………………………………………….., do hereby solemnly affirm and state as under: -

1. That I am the Director and Authorized Representative of the Petitioner No. 1 Company.
2. That I have read the petition now shown to me, and state that the statements made in paragraph I to VI thereof are correct and true to my knowledge.
3. That the contents made in paragraphs VII are in the form of Prayer, and the contents made in paragraphs X contains list of enclosures.

DEPONENT

VERIFICATION

I, the above named deponent, do hereby verify that the contents of Para 1, 2, and 3 of the above affidavit are true and correct to the best of my knowledge and that no part hereof is false and nothing material has been concealed therefrom.

Verified at ……………. on this ………. day …………., 2023.

DEPONENT

BEFORE THE ....

COMPANY PETITION NUMBER...........2023

IN THE MATTER OF SECTION 441 OF THE COMPANIES ACT, 2013

(For the offence committed under Section .... of the Companies Act, 2013)

AND

IN THE MATTER OF:

COMPANY NAME, HAVING ITS REGISTERED OFFICE AT ADDRESS

.........PETITIONER No. 1

AND

............................., **DIRECTOR, S/O MR.** ...., **R/O** ....
....

.........PETITIONER No. 2

AFFIDAVIT VERIFYING PETITION

I, ..., S/o Mr. ...., aged about .... years R/o .... do hereby solemnly affirm and state as under: -

1. That I am the Director of the Petitioner No. 1 Company and Petitioner No. 2 in the present petition.
2. That I have read the petition now shown to me, and state that the statements made in paragraph I to VI thereof are correct and true to my knowledge.
3. That the contents made in paragraphs VII are in the form of Prayer, and the contents made in paragraphs X contains list of enclosures.

DEPONENT

VERIFICATION

I, the above-named deponent, do hereby verify that the contents of Para 1, 2, and 3 of the above affidavit are true and correct to the best of my knowledge and that no part hereof is false and nothing material has been concealed therefrom.

Verified at .... on this .... day ...., 2023.

DEPONENT

ADJUDICATION AND E-ADJUDICATION

Section 454 of the Companies Act, 2013 provides the substantive law relating to Adjudication of penalties for companies.

It inter alia provides that:

The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of Companies Act in the manner as may be prescribed.

The Central Government shall while appointing adjudicating officers, specify their jurisdiction.

The adjudicating officer may, by an order-

(a) impose the penalty on the company, the officer who is in default, or any other person, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, to rectify the default, wherever he considers fit.

However, in case the default relates to non-compliance of sub-section (4) of section 92 or sub-section (1) or sub-section (2) of section 137 and such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.

The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company, the officer who is in default or any other person.

Any person aggrieved by an order made by the adjudicating officer under sub-section (3) may prefer an appeal to the Regional Director having jurisdiction in the matter.

Every appeal as mentioned above shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person.

The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.

THE COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014

Adjudication of Penalties (Rule 3)

The central government can appoint any officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Companies Act(the Act).

Before adjudging penalty, the adjudging officer shall issue a written notice in the specified manner, to the company, the officer who is in default or any other person, as the case may be, to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than thirty days from the date of service thereon), why the penalty should not be imposed on it or him.

Every notice issued as mentioned above, shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company, officer in default, or any other person, and also draw attention to the relevant penal provisions of the Act and the maximum penalty which can be imposed.

The reply to such notice shall be filed in **electronic mode only** within the period as specified in the notice:

Provided that the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding fifteen days, if the company or officer in default or any person, satisfies the adjudicating officer that it or he has sufficient cause for not responding to the notice within the stipulated period or the adjudicating officer has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply.

If, after considering the reply submitted, the adjudicating officer is of the opinion that physical appearance is required, he shall issue a notice, within a period of ten working days from the date of receipt of reply fixing a date for the appearance of such company, through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative:

However, if any person, to whom a notice is issued, desires to make an oral representation, whether personally or through his authorised representative and has indicated the same while submitting his reply in electronic mode, the adjudicating officer shall allow such person to make such representation after fixing a date of appearance.

On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit including as order for adjournment:

However, after hearing, adjudicating officer may require the concerned person to submit his reply in writing on certain other issues related to the notice, relevant for determination of the default.

The adjudicating officer shall pass an order,-

(a) within thirty days of the expiry of the period in sub-rule (2),or of such extended period as reffered therein, where physical appearance was not required;

(b) within ninety days of the date of issue of notice under rule (2),where any person appeared before the adjudicating officer.

However, in case an order is passed after the aforementioned duration, the reasons of the delay shall be recorded by the adjudicating officer and no such order shall be invalid merely because of its passing after the expiry of such thirty days or ninety days.

Every order of the adjudicating officer shall be duly dated and signed by him and shall clearly state the reasons for requiring the physical appearance under sub-rule (5).

The adjudicating officer shall send a copy of the order passed by him to the concerned company, officer who is in default or any other person or all of them and to the Central Government and a copy of the order shall also be uploaded on the website.

For the purposes of this rule, the adjudicating officer shall exercise the following powers, namely:

(a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;

(b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter.

If any person fails to reply or neglects or refuses to appear as required under sub-rule (5) or sub-rule (10) before the adjudicating officer, the adjudicating officer may pass an order imposing the penalty, in the absence of such person after recording the reasons for doing so.

While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-

(a) size of the company;

(b) nature of business carried on by the company;

(c) injury to public interest;

(d) nature of the default;

(e) repetition of the default;

(f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and

(g) the amount of loss caused to an investor or group of investors or creditors as a result of the default.

However, in no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Companies Act.

In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.

Adjudication Platform (Rule 3A)

(1) On the commencement of the Companies (Adjudication of Penalties) Amendment Rules, 2024, all proceedings (including issue of notices, filing replies or documents, evidences, holding of hearing, attendance of witnesses, passing of orders and payment of penalty) of adjudicating officer and Regional Director under these rules shall take place in electronic mode only through the e-adjudication platform developed by the Central Government for this purpose.

(2) In case the e-mail address of any person to whom a notice or summons is required to be issued under these rules is not available, the adjudicating officer shall send the notice by post at the last intimated address or address available in the records and the officer shall preserve a copy of such notice in the electronic record in the e-adjudication platform referred to in sub-rule (1):

Provided that in case no address of the person concerned is available, the notice shall be placed on the e-adjudication platform.

Provided that the proceedings pending before the Adjudicating Officer or Regional Director on the date of such commencement shall continue as per provisions of these rules existing prior to such commencement.

Appeal Against the Order of Adjudicating Officer (Rule 4)

Every appeal against the order of the adjudicating officer shall be filed in writing with the Regional Director having jurisdiction in the matter within a period of sixty days from the date of receipt of the order of adjudicating officer by the aggrieved party, in Form ADJ setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought:

However, where the party is represented by an authorised representative, a copy of such authorisation in favour of the representative and the written consent thereto by such authorised representative shall also be appended to the appeal.

Further, an appeal in Form ADJ shall not seek relief(s) therein against more than one order unless the reliefs prayed for are consequential.

Registration of Appeal (Rule 5)

On the receipt of an appeal, office of the Regional Director shall endorse the date on such appeal and shall sign such endorsement.

If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number. Further, where the appeal is found to be defective, the Regional Director may allow the appellant such time, not being less than fourteen days following the date of receipt of intimation by the appellant from the Regional

Director about the nature of the defects, to rectify the defects and if the appellant fails to rectify such defects within the time period allowed as above, the Regional Director may by order and for reasons to be recorded in writing, decline to register such appeal and communicate such refusal to the appellant within a period of seven days thereof.

The Regional Director may, for reasons to be recorded in writing, may further extend the period referred to in above by a further period of fourteen days if an appellant satisfies the Regional Director that the appellant had sufficient cause for not rectifying the defects within the period of fourteen days referred to in the first proviso.

Disposal of Appeal by Regional Director (Rule 6)

On the admission of the appeal, the Regional Director shall serve a copy of appeal upon the adjudicating officer against whose order the appeal is sought along-with a notice requiring such adjudicating officer to file his reply thereto within such period, not exceeding twenty-one days, as may be stipulated by the Regional Director in the said notice.

However, the Regional Director may, for reasons to be recorded in writing, extend the period referred above for a further period of twenty-one days, if the adjudicating officer satisfies that he had sufficient cause for not being able to file his reply to the appeal within the above-said period.

A copy of every reply, application or written representation filed by the adjudicating officer before the Regional Director shall be forthwith served on the appellant by the adjudicating officer.

The Regional Director shall notify the parties, the date of hearing of the appeal which shall not be a date earlier than thirty days following the date of such notification for hearing of the appeal.

On the date fixed for hearing the Regional Director may, subject to the reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.

In case the appellant or the adjudicating officer does not appear on the date fixed for hearing, the Regional Director may dispose of the appeal *ex-parte:*

However, where the appellant appears afterwards and satisfies the Regional Director that there was sufficient cause for his nonappearance, the Regional Director may make an order setting aside the *ex-parte* order and restore the appeal.

Every order passed under this rule shall be dated and signed by the Regional Director.

A certified copy of every order passed by the Regional Director shall be communicated to the adjudicating officer and to the appellant forthwith and to the Central Government.

PETITION FOR WINDING UP

According to section 272(1), subject to the provisions of this section, a petition to NCLT for the winding up of a company shall be presented by—

(a) the company;

(b) any contributory or contributories;

(c) all or any of the persons specified in clauses (a) and (b);

(d) the Registrar;

(e) any person authorised by the Central Government in that behalf; or

(f) in a case falling under clause (c) of sub-section (1) of section 271, by the Central Government or a State Government.

Section 272(*2*) provides that a contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

Section 272(*3*) provides that the Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (*a*) of that section:

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

Section 272(*4*) provides that a petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

Section 272(*5*) provides that a copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.".

THE COMPANIES (WINDING UP) RULES, 2020

Petition for winding up (Rule 3)

(1) For the purposes of sub-section (1) of section 272, a petition for winding up of a company shall be presented in Form WIN 1 or Form WIN 2, as the case may be, with such variations as the circumstances may require, and shall be presented in triplicate.

(2) Every petition shall be verified by an affidavit made by the petitioner or by the petitioners, where there are more than one petitioners, and in case the petition is presented by a body corporate, by the Director, Secretary or any other authorised person thereof, and such affidavit shall be in Form WIN 3.

FORM WIN 1

[See rule 3(1)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT _______________

IN THE MATTER OF ______________LTD (give the name of the company) (Company incorporated under Companies Act, ________)

Petition No_____ of 20______

____________Petitioner

Petition of winding-up

The petition of (full name, description, occupation and address of petitioner) showeth:

1. The address of the petitioner above named for the service of all notices, processes, etc., is that of his representative Shri at ___________________.

2. The company above named, viz., (hereinafter referred to as 'the company') was incorporated in the month of___________19_____ /20_____ , under the (Companies Act,_______) as a public (private) company limited by shares/limited by guarantee/as an unlimited company.

3. The registered office of the company is situated at_________________.

4. The nominal capital of the company is Rs__________ divided into ______shares of Rs ________ each. The amount of capital paid up or credited as paid-up is Rs _______(or as the case may be.

5. The objects for which the company was incorporated are (herein set out the main objects) and any matter considered necessary for furtherance thereof set forth in the memorandum of association thereof.

6,7,8 etc. [Here set out in numbered paragraphs, as may be necessary, the facts on which the petitioner relies in support of the petition. Where the petitioner is a contributory, the petition should state whether the conditions of sub-section (2) of section 272 are satisfied. Where the petition is presented by the Registrar of Companies or by a person authorised by the Central Government, the order' of sanction or authorisation of the Central Government should be annexed to the petition. After setting out the facts conclude as follows:

PRAYER

The petitioner, therefore, prays as follows:-

(1) That the ________________Co., Ltd. be wound up by the Tribunal under the provisions of the Companies Act, ___ , and

(2) Such other order may be made in the premises as shall be just.

Representative of Petitioner

Petitioner

Note: It is intended to serve this petition on ____________

ENCLOSURES

1. Where the petition is presented by the Registrar of Companies or a person authorized by the Central Government, the order of sanction or authorisation of the Central Government.
2. Statement of affairs in FORM WIN4 ________ in case winding up petition is being filed by the company.

FORM WIN 2

[See rule 3(1)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT _______________

IN THE MATTER OF ______________LTD (give the name of the company) (Company incorporated under Companies Act, ________)

Petition No_____ of 20______

____________ Company Limited – Petitioner

Petition by company

The petition of_____________ Co. Ltd., the petitioner herein, showeth as follows:-

1. The address of the petitioner above named for the service of all notices, processes, etc., is that of his representative Shri at __________________.

2. The company above named, viz., (hereinafter referred to as 'the company') was incorporated in the month of____________19_____ /20_____ , under the (Companies Act,_______) as a public (private) company limited by shares/limited by guarantee/as an unlimited company.
3. The registered office of the company is situated at__________________.
4. The nominal capital of the company is Rs___________ divided into ______shares of Rs _________ each. The amount of capital paid up or credited as paid-up is Rs _______(or as the case may be.
5. The objects for which the company was incorporated are (herein set out the main objects) and any matter considered necessary for furtherance thereof set forth in the memorandum of association thereof.
6. Where the company is already being wound-up voluntarily or by the Tribunal, the facts showing that the voluntary winding-up or winding-up by the Tribunal, as the case may be, cannot be continued with due regard to the interests of the creditors or contributories or both, should be set out.
7. By a special resolution of the company duly passed in accordance with section 271 of the Companies Act, 2013, at a general meeting thereof, held on the _____ day of ______ 20____, after due notice as provided in the Act, it was resolved unanimously (or, by a majority of. votes against votes) as follows:-

   (Here set out the resolution)

   [Here set out in paragraphs the facts relating to the financial position of the company and the circumstances that have led to the passing of the special resolution.]
8. The petitioner therefore prays as follows:-
   (1) That the _____________Co., Ltd., may be wound-Up by the Tribunal under the provisions of the Companies Act, ___ , and
   (2) Such other order may be made in the premises as shall be just.

Representative for the Petitioner

Petitioner

APPEALS BEFORE NCLAT

Section 420 of the Companies Act, 2013 states that the National Company Law Tribunal may pass any orders it thinks fit, as long as it gives the parties before it, an opportunity of being heard. The powers of the Tribunal are, therefore, extremely wide and there are no restrictions on the kind of relief that it can grant in a particular case.

The Tribunal may also rectify any mistake that is apparent on the face of the record within two years from the date of the order.

In view of the enormous powers of the Tribunal, an attempt is being made to highlight the provisions for making appeals from the orders of the Tribunal.

Appeal from the Orders of NCLT – Section 421

(1) any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

(2) no appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of

forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

Section 421 of Companies Act 2013 seeks to provide appeal against the order of the Tribunal in the Appellate Tribunal. It provides that appeal may be filed within ***45 days*** from the date of order and in case Appellate Tribunal is satisfied that delay is justified then further period of 45 days is allowed. The Appellate Tribunal after according an opportunity of hearing may confirm, modify or set aside order of the Tribunal and provide copy of order to the Tribunal and parties to appeal.

At this point our enlightened reader's mind may be interrupted with many questions as to: who is a person aggrieved? What is the interpretation of limitation period in this clause? What all will be construed as sufficient cause? etc.

"Any person aggrieved"

In common judicial parlance the term person aggrieved by a decision includes :

(a) a person whose interests are adversely affected by the decision; or

(b) in the case of a decision by way of the making of a report or recommendation – a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation.

A party or a person is aggrieved by a decision only when it operates directly and injuriously upon his personal, pecuniary or proprietary rights. A person who feels disappointed with the result of a case is not a person aggrieved. The order must cause him a legal grievance by wrongfully depriving him of something.

Who is a 'person aggrieved' also was debated and decided in catena of judicial pronouncements. In FERTILIZER COOPERATION KAMGAR UNION v. UNION OF INDIA, AIR 1981 SC 344 and BANGALORE MEDICAL TRUST VS. MUDDAPPA, AIR 1991 SC 1902 the Court found that question of 'person aggrieved' is different from the question whether the petitioner is entitled to relief as prayed by him. The expression 'person aggrieved' denotes an elastic and to some extent an elusive concept. According to traditional theory, only a person whose right has been infringed can apply to the court but the later view as referred to above has liberalised the concept of aggrieved person and the right duty pattern commonly found in adversarial litigation has been given up. The only limitation is that such a person should not be a total stranger known as meddlesome interloper.

In the case of *Ayaaub Khan Noor Khan Pathan* v. *State of Maharashtra [(2013) 4 SCC 465*], the Hon'ble

Supreme Court has held that only a person who has suffered a legal injury can challenge an act/action/order etc. in a court of law by way of a writ under Article 226 of the Constitution of India. Writs under Article 226 of the Constitution of India are maintainable either for the purpose of enforcing a legal or fundamental right or when there is a sustainable complaint by the petitioner that there has been a breach of statutory duty on part of the authority qua him and to his prejudice thus making out a judicially enforceable right of his for enforcement. It has been held in the aforesaid case by the Hon'ble Supreme Court that it is implicit in the exercise of the extraordinary equitable jurisdiction of the High Courts that the relief prayed for must be for the enforcement of a legal right. A "legal right" has been held to mean entitlement arising out of legal rules. Concluding in para

17 of the aforesaid report on the question as to **who is a ”person aggrieved**”, the Hon’ble Supreme Court has held that “in view of the above, law on the said point can be summarised to the effect that a person who raises a grievance must show how he has suffered a legal injury”.

LIMITATION PERIOD FOR FILLING APPEAL

Section 421(3) of Companies Act, 2013

The appeal lies to the Appellate Tribunal within 45 days from the date of communication of the order of the Tribunal. The limitation period can be further extended by 45 days if the Appellate Tribunal is satisfied that the appellant was prevented by sufficient cause from filling the appeal.

The Supreme Court in the case of *N. Balakrishnan* v. *M. Krishnamurthy AIR 1998 SC 3222* has held that unless there is a deliberate, malafide or gross negligence, reasonable delay should be condoned in as much as a person does not benefit by filing a petition with delay. Once no malafides or illegal motive can be imputed to a person to file a petition with delay, delay should ordinarily be condoned.

A question arises, Whether provisions of Section 5 of Limitation Act, 1963, are applicable to an appeal filed under Section 421 of Companies Act 2013 (corresponding to Section 10F of Act, 1956) ?

Words used in (3) proviso to Section 421 of 2013 Act are “not exceeding 45 days” thereby clearly prescribing time limit of only 45 days, in addition to initial period of 45 days allowed under Section 421(3), to enable a party to file an appeal against the orders of Tribunal. The said proviso clearly shows that power vested in Appellant Tribunal to condone delay on sufficient cause being shown is directory and subject to discretion vested in the Appellant Tribunal. However, maximum period to extent of which such delay is capable of being condoned is mandatorily prescribed and not open to exercise of any discretion. Therefore, words “not exceeding 45 days” would amount to an express exclusion within meaning of Section 29(2) of the Limitation Act, 1963 and would therefore bar application of Section 5 of Act, 1963 to Section 421 of Companies Act 2013. In view thereof, scheme of Act, 2013, surely supports curtailment of Appellant Tribunal’s powers by exclusion of operation of Section 5 of Act, 1963.

The legislative intent as reflected from the Companies Act, 2013, resulting in the constitution of the NCLAT and the Section 421 providing for a limited appeal make it abundantly clear that the Legislature intended to restrict the power of the Appellant Tribunal to condone the delay beyond the period exceeding 45 days and thus prescribed in a mandatory language as under:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

The hon’ble Supreme Court in *Union of India* v. *Popular Construction Co. [2001] 8 SCC 470*, if there were any residual doubt on the interpretation of the language used in Section 10F, the legislative intent behind the constitution of the Company Law Board and the object of insertion of Section 10F would resolve the issue involved of curtailment of the court’s power with the exclusion of the operation of Section 5 of the Limitation Act, 1963.

”Delay shall be condoned when special statute itself expressly provides for it.”

Manohar Lal Sharma v. *Union Of India (UOI) and ANR. 2009 (6) ALD 315, [2009] 152 Comp Cas 412 (AP), (2010) 1 Comp LJ 19 (AP)*

As to the applicability of Section 5 of the Limitation Act, the learned judge considered the question in the light of the law laid down by the apex court in *Union of India* v. *Popular Construction Co. [2001] 8 SCC 470 : AIR 2001 SC 4010 and Gopal Sardar* v. *Karuna Sardar [2004] 4 SCC 252,* and laid down as follows):

"There is no dispute that the Companies Act, 1956, is a special law. Under the normal circumstances, the provisions of the Limitation Act will have application to all appeals and applications under the Companies Act, unless a different period of limitation is prescribed. As noticed herein above, the company law itself has prescribed a period of limitation for filing the appeal and also for condonation of delay. Hence, condonation of delay for filing the appeal beyond the prescribed period of limitation is by virtue of the proviso to Section 10F. This proviso can be considered to be akin to Section 5 of the Limitation Act. However, the proviso imposes limitation for extension of time in filing the appeal beyond the prescribed period of limitation, the expression used in Section 10F being 'further period not exceeding, sixty days'... The proviso to Section 10F has created an absolute bar for extension of period of limitation beyond sixty days apart from the period of limitation of sixty days prescribed under Section 10F. The expression 'not exceeding' does not permit any further extension and it seems that the true import, purport and construction of the proviso is to restrict the total period of limitation to 120 days, i.e., sixty days principal and sixty days by extension subject to existence of sufficient cause in a given case. Any other interpretation would amount to committing violence to the statute itself which is impermissible under law.

13. Yet again, the court ruled

...it is abundantly clear that where particular statute does not apply to Section 5 of the Limitation Act expressly or even impliedly in a special or local law itself, it shall be presumed that the exclusion is express. Section 29(2) of the Act not only excludes the application of Section 5 of the Limitation Act but also other sections from Sections 4 - 24 (inclusive). Thus, Section 14 also stands excluded from its application for purposes of either condoning the delay or exclusion of the period on the ground envisaged therein notwithstanding existence of sufficient cause. Thus, even if the period spent before the Hon'ble Delhi High Court constitutes sufficient cause for extension of period under Section 5 read with Section 14 of the Limitation Act, these sections cannot be applied de hors proviso to Section 10F to extend the limitation beyond sixty days in addition to the original period of sixty days (total 120 days) for filing an appeal as proviso to Section 10F does not permit such extension."

Any appeal filed beyond the maximum period prescribed in the special statutes will be barred by limitation. *Kabul Chawla* v. *CPI India Real Estate Ventures Limited and Ors*. Therefore no appeal will be entertained by the Appellate Tribunal after the expiry of 45+45=90 days.

In *'Union of India* vs. *M/s. Popular Construction Co.', AIR 2001 SC 4010* the Supreme Court has held that the provisions of Section 5 cannot be invoked since in Section 34(3) of Arbitration Act, 1996, while fixing the time period for filing objections challenging the Award of the Arbitral Tribunal, the words used "but not thereafter" – meaning thereby the legislature intended that no further time can be granted to the petitioner for filing objections under Section 34(3) of Arbitration Act, 1996 by invoking the provisions of Section 5 of Limitation Act. Therefore, to sum up, if the words used in any particular legislation convey legislative intent that the petitioner shall not be entitled to further time by invoking the principle of Section 5 of Limitation Act, then the provisions Limitation Act, 1963 shall not apply.

"Sufficient Cause"

A litigant who failed to file an Appeal before the appellant Tribunal within the permissible time period as fixed then he can file it after the expiry of the prescribed time period provided he has "sufficient cause" for non- filing the Appeal within the time period. In *Dinabandhu Sahu* v. *Jadumoni, Mangaraj, AIR 1954 SC 411*, the Supreme Court approve of the dicta in *Krishna* v. *Chathappan*, that 'sufficient cause' should receive a liberal construction so as to advance substantial justice, when no negligence, nor inaction, nor want of bonfide is imputablle to the appellant. If sufficient cause is shown, the court has to exerciseits discretion in favour of the appellant. The true guide for the court in its exercise of such discretion is wether the appellant had acted with reasonable diligence in prosecuting his appeal. But the circumstances of each case must be examined to see whether they fall within or without the terms of this general rule.

In *Maniben Devraj Shah* v. *Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157*, the Supreme Court has ruled thus:

23. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory.

"Appeal from an Order or Decision"

A similar phrase has been used in several statutes. The expression "any decision or order", is of wide amplitude and would include all orders or decisions passed by the Board. *Cf. Kantilal Shah* v. *CC 1982 ELT 902(CAL).* The expression is wide enough to include interlocutory orders passed by the board. An appeal against an order which did not decide the rights of the parties is maintainable. *Gharib Ram Sharma* v. *Daulat Ram Kashyab, (1994) 80 Com Cases*.

Where in a case before the Bombay High Court, during the pendency of an appeal against dismissal of a winding up petition, an application was made to CLB [now Tribunal under the 2013 Act] for appointment of an administrator for prevention of mismangement under scetopn 398 of 1956 Act[corresponding to section 241 of the 2013 Act] and the same was admitted under an order that the matters of mismanagement would not be raised in the winding up petition and an appeal was made to the same High Court against this order also. The court refused to dismiss it summarily but ordered that if an adminsitrator was appointed by the CLB, 14 days' time should be given to any aggrieved party to prefer an appeal against an order. *Thakur Savadikar & Co. (P.) Ltd.* v. *S.S. Thakur*, *(1996) 23, CORPT LA 170(BOM).*

An order of the CLB in a matter for reference to arbitration under section 8 of the Arbitration and Conciliation Act,1996 is not appealable in view of the fact that scetion 5 of that Act permits appeals to judicial authorities only in the matters specified in that section and the order of reference is not one of those matters. *Hind Samachar Ltd.* v.. *Union of India (UOI) and Ors.*

"OPPORTUNITY OF BEING HEARD"

SECTION 421(4) OF COMPANIES ACT 2013

Opportunity to be heard means the chance to appear before a court or Tribunal to present evidence and argument before being punished by governmental authority. An opportunity to be heard before penalty or punishment is imposed for contempt is an indispensable essential to the administration of due process of law as contemplated by the constitutional inhibition. Notice and an opportunity to be heard are the hallmarks of due process. However, due process does not always require an adversarial hearing. The violation of a state statute outlining procedure does not necessarily equate to a due process violation under the federal constitution. An opportunity to be heard ordinarily includes the following three rights:

- the right to receive fair notice of the hearing;
- the right to secure the assistance of counsel; and
- the right to cross examine adverse witnesses.

What is "opportunity of being heard"? The Karnataka High Court in *Karibasappa Kuravateppa Maradibankar* vs. *Assistant Commissioner, ILR 1997 Karnataka 2236* held:

It is well settled that the right of oral or personal hearing is not an essential element of natural justice. No doubt, a person sought to be proceeded against is entitled to a right of defence, but that does not necessarily imply a personal hearing. Even an opportunity to file a written representation complies with the principles based on the requirement of natural justice... It is well settled that whether oral hearing should be given or written representation will meet the ends of justice depends on the facts of each case. It is only in such cases which require determination of disputed question of fact, where personal hearing becomes incumbent. If not otherwise provided in the statute itself, 'hearing' does not mean grant of a personal hearing as mandatory. In the present case, the facts were not at all in dispute. The decision of the Assistant Commissioner is based on clear and unambiguous provisions of law. Therefore, non- grant of personal hearing cannot be said to be fatal.

The requirement of the rule of natural justice is that the parties whose civil rights are to be affected by a quasi judicial authority must have a reasonable opportunity of being heard in their defence. "stating it broadly and without intending it to be exhaustive.....rules of natural justice require that a party should have the opportunity of addcuing all relevant evidence on which it relies, that the evidence of opponent should be taken in his presence and he should be given the opportunity of cross examining the witness examined by the party, and that no materials should be relied on against him without his being given an opportunity of explaining them."

Expeditious disposal by Tribunal and Appellate Tribunal

Section 422 of the Companies Act 2013 provides for expeditious disposal of applications and petitions filed before the Tribunal and Appellate Tribunal. Where the Tribunal or the Appeallate Tribunal does not dispose of the matter before it within three months of its presentation, the Tribunal or the Appellate Tribunal is required to record to record the reasons for such delay. And after considering the reasons so recorded the President or the Chairperson, as the case may be, has the discretion to extend the period for disposal of the matter, not exceeding ninety days.

Appeal to Supreme Court (Section 423)

Any person aggrieved by an order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the Appellate Tribunal to him on any question of law arising out of such order.

The Supreme Court may allow it to be filed within a further period not exceeding sixty days, if it is satisfied, that the appellant was prevented by sufficient cause from filing the appeal with this period.

Power under Article 226 and 227 not taken away

It was held in *L. Chandra Kumar V. Union of India* and *Satyanarayan* v. *Atmaram* that the High Court's power under Articles 226 & 227, being a part of the basic structure of the Constitution, can never be taken away. Practically, however, since a direct appeal has been provided to the Supreme Court under section 423 of the Companies Act, 2013, the High Court will not interfere in a writ petition from the order of the Tribunal or the Appellate Tribunal unless there is a violation of the principles of natural justice or a lack of jurisdiction.

PROCEDURE FOR FILING AN APPEAL BEFORE NCLAT AGAINST THE ORDERS OF NCLT

Rule 22 of NCLAT Rules, 2016- Presentation of appeal

(1) Every appeal shall be presented in Form **NCLAT-1** in triplicate by the appellant or petitioner or applicant, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every appeal shall be accompanied by a certified copy of the impugned order of NCLT.

(3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.

(5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.

(6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.

Rule 23 of NCLAT Rules, 2016- Number of copies to be filed

The appellant or petitioner or applicant shall file three authenticated copies of appeal or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

Rule 24 of NCLAT Rules, 2016- Endorsement and verification

At the foot of every appeal or pleading there shall appear the name and signature of the authorised representative and every appeal or pleadings shall be signed and verified by the party concerned in the manner provided by these rules.

Rule 25 of NCLAT Rules, 2016- Translation of document

(1) A document other than English language intended to be used in any proceeding before the Appellate Tribunal shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by the authorised representative engaged on behalf of parties in the case.

Fee for filing an Application

Rule 55 of NCLAT Rules, 2016 (1) Fee for filing appeal or interlocutory application, and process fee shall be Rs. 5000/-.

(2) The fee and process fee shall be deposited by separate demand draft or Indian Postal Order favouring the Pay and Accounts Officer, Ministry of Corporate Affairs, payable at New Delhi.

The Appellate Tribunal may, to advance the cause of justice and in suitable cases, waive payment of such fee or portion thereof, taking into consideration the economic condition or indigent circumstances of the petitioner or appellant or applicant or such other reason, as the case may be.

AFFIDAVITS

Rule 67 of NCLAT Rules, 2016- Title of affidavits.-

Every affidavit shall be titled as “Before the National Company Law Appellate Tribunal.” followed by the cause title of the application or other proceeding in which the affidavit is sought to be used.

Rule 68 of NCLAT Rules, 2016. Form and contents of the affidavit.-

The affidavit as per **Form NCLAT-4** shall conform to the requirements of order XIX, rule 3 of Civil Procedure Code, 1908 (5 of 1908).

Rule 69 of NCLAT Rules, 2016. Persons authorised to attest.-

Affidavits shall be sworn or attested by a Notary Public or Oath Commissioner who shall affix his official seal.

Rule 70 of NCLAT Rules, 2016. Affidavits of illiterate, visually challenged persons.-

Where an affidavit is sworn or affirmed by any person who appears to be illiterate, visually challenged or unacquainted with the language in which the affidavit is written shall be in **Form NCLAT-5**, the attestor shall certify that the affidavit was read, explained or translated by him or in his presence to the deponent and that he seemed to understand it, and made his signature or mark in the presence of the attestor.

Rule 71 of NCLAT Rules, 2016. Identification of deponent.-

If the deponent is not known to the attestor, his identity shall be testified by a person known to him and the person identifying shall affix his signature in token thereof.

Rule 72 of NCLAT Rules, 2016-. Annexures to the affidavit.-

(1) Document accompanying an affidavit shall be referred to therein as Annexure number and the attestor shall make the endorsement thereon that this is the document marked putting the Annexure number in the affidavit.

(2) The attestor shall sign therein and shall mention the name and his designation.

FILING OF INTERLOCUTORY APPLICATION

Rule 31 of NCLAT Rules, 2016-

Every interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in Form **NCLAT-2** and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing a affidavit supporting the application.

IMPORTANT POINTS TO BE KEPT IN MIND

Rule 19 of NCLAT Rules, 2016- Procedure for proceedings. –

(1) Every appeal to the Appellate Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type- written or printed in double spacing on one side of standard paper with an inner margin of about four centimeters width on top and with a right margin of 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form.

(2) The cause title shall state “In the National Company Law Appellate Tribunal” and also set out the proceedings or order of the authority against which it is preferred.

(3) Appeal shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.

(4) Where Saka or other dates are used, corresponding dates of Gregorian calendar shall also be given.

(5) Full name, parentage, description of each party and address and in case a party sue or being sued in a representative character, shall also be set out at the beginning of the appeal and need not be repeated in the subsequent proceedings in the same appeal.

(6) The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party and these numbers shall not be changed and in the event of the death of a party during the pendency of the appeal, his legal heirs or representative, as the case may be, if more than one shall be shown by subnumbers.

(7) Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.

(8) Every proceeding shall state immediately after the cause title and the provision of law under which it is preferred.

CASE STUDIES

CASE STUDY ON MERGERS & AMALGAMATIONS

HIJ Infocom Ltd is a listed company at NSE and BSE with market capitalization of Rs. 21.3 cr. The Authorised Share Capital of the Company is Rs. 15 cr divided into 1,50,00,000 Equity shares of Rs. 10 each and the paid up share capital is Rs. 7.5 cr. It began its operations in 1992 as a hardware items provider, before growing to include software services, IT training, consulting, and, eventually, Total IT Solutions that include LPO, BPO, and KPO services and now has five manufacturing sites in Jammu, Noida, and Jharkhand that produce a wide range of goods. It has installed over 50,000 PCs and servers around the country, and the company now employs over 450 employees. It has fought through adversity and remains committed to its goal of being one of the world's top IT solutions providers. Revenue of the company has been increased to Rs. 70 cr from Rs. 42 cr in the last quarter of 2022-23. Promoters hold 58.33% stake in the company. Company has taken the consent of the Shareholders of the company via Extra ordinary general meeting held on 22nd April, 2021 for the amalgamation with the I Kall Ltd. I Kall ltd, a listed company at NSE and BSE with market capitalization of Rs. 15.91 cr. The Authorised Share Capital of the Company is Rs. 11 cr divided into 1,10,00,000 Equity shares of Rs. 10 each and the paid up share capital is Rs. 9 cr. I Kall is a global pioneer in networking and connection devices for consumers, small companies, medium to big corporations, and service providers, and is amongst the best hardware companies in India. Since 1976, the firm has developed from humble beginnings in Maldives to an award-winning worldwide brand with over 1500 workers in 40 countries. I Kall is establishing the groundwork for a more connected, intelligent, and easy society today. The I Kall style of doing business has been defined by an unwavering dedication to client satisfaction, an unfettered desire to succeed, seamless teamwork, and strong business ethics. The Growth of the company has seen from its Profit which has been significantly raises from Rs. 82.5 cr in the last quarter to Rs. 155.78 cr in this period.

In this regard, draft a Specimen Petition between two Companies to Amalgamate by Sale of I Kall ltd to HIJ Infocom Ltd to be filed before NCLT. Assume necessary facts.

CASE STUDY ON OPPRESSION AND MISMANAGEMENT

Bell Cements Ltd., a public ltd company which is among the Top 50 Companies in Cement in terms of sales. Incorporated in 1989 by renowned family based out of Kolkata. The company set-up the first Cement Plant in 1995 with an installed capacity of 0.6 Mtpa. Today, the total Cement production capacity of the Company is 29.30 Million tons. Current Revenue of the company is Rs. 9,455 cr and market capitalization of Rs. 45,411 cr. Around 1700 employees are working in the organization. Also, the total market share of the company is 6%. The main product of the company is Portland cement, manufactured in eight state-of-the-art production facilities that include Integrated Cement plants and Grinding units. However, the directors are managing the affairs of the company in a manner prejudicial to the interests of the company. Mostly, decisions w.r.t investing funds of the company, borrowing monies, giving loans or giving guarantee or provide security in respect of loan have been taken without conducting the physical meeting. No notice of the meeting has been sent and no resolutions has been filed with the Registrar of Companies. As this shows the clear violation of Section 179 of the Companies Act, 2013.

As a Shareholder, draft a specimen application to be filed with National Company Law Tribunal for prevention of Oppression and Mismanagement. Assume necessary facts.

CASE STUDY ON CLASS ACTION

EBC JCK ltd., a listed company at NSE and BSE with market capitalization of Rs. 36.3 cr. In the last three decades, it has developed from a single production unit to become India's major integrated steel corporation, with a capacity of 25 MTPA in India and the Japan. Since its inception, the company has always been on the cutting edge of research and development. In addition to construction and infrastructure, the products are used in several other industries including automobile, electrical applications, appliances, etc. The company also uses the latent heat generated inside its furnaces to generate electricity, which is mostly used for internal consumption. According to reports, its revenue increased from Rs 71.3 crore in the fiscal year 20-21 to Rs 139.11 crore in the fiscal year 21-22. The company's PBT margin increased from 6.42 in the previous year to 13.71 in fiscal year 21–22, resulting in an increase in PAT from Rs. 2.46 crore to Rs. 7.07 crore. However, it is being noticed by the employees that board of directors of the company are not working for the benefit of the company. Funds of the company have been rotated to the personal accounts of the directors. Also, they have been fraudulently using the properties of the company for their own personal use. Directors are not following the rules and regulation of the organization. 65 Shareholders holding 15% of equity shareholding of the Company joined together to file a class action suit.

Can they take action under section 245 of the Companies Act, 2013? If yes, Draft a specimen application to be filed with National Company Law Tribunal on behalf of members for restraining its directors from committing an act which is ultra vires the articles or memorandum of the company. Assume necessary facts.

CASE STUDY ON COMPOUNDING

Timber Industries Pvt. Ltd., incorporated in the year 1981 has grown over the last two decades as one of India's leading aluminium extrusion profile manufacturing companies. In the last three years, its production has increased manifold reaching nearly 8000 tonnes. Today Timber has more than 8,000 special aluminium extruded shapes, tools, dies, cuts and profiles that are consistently used for domestic and export purposes.

Headquartered in Banglore, Timber Industries is a manufacturer of all-alloy aluminium rods, floors, grills, railings, aluminium scrap, aluminium/aluminium wire, and EC grade wire rods used for redrawing into Wires / Strips for the manufacture of Cables, Conductors, Transformer Wires / Strips and various hardware / General Engineering Components. For the year ended March 2021, Timber Industries total income from operations stood at INR 71.20 crores, and EBITDA was INR 0.75 crore. With the global fluctuation in commodity markets, the financials of the company have been impacted badly. Yet, the management seems to be very positive about the future outlook. However, the company has failed to file its Financial Statements to the Registrar of Companies of the last three financial years and there was a non-compliance with CSR related provisions.

This default has been noticed by the new director of the company and all the previous forms have been duly filed with the Registrar.

In this regard, draft an application for compounding to be filed for making the default good before NCLT. Assume necessary facts.

CASE STUDY ON WINDING UP

DVR Ltd is a listed company at NSE and BSE with market capitalization of Rs. 111.78 cr. Company came out with IPO in the year 2012 and they have been in the industry for several years and have established themselves as a pioneer in developing innovative drone solutions for various industries. They specialize in providing drone solutions for agriculture, surveying, mapping, and infrastructure development. Their drones are designed to be efficient, cost-effective, and reliable, making them a top choice for many businesses. Their drones are equipped with advanced imaging solutions that enable businesses to gather accurate data and make informed decisions. However, from the past few years company is struggling in its business. Losses of the company has been rapidly increased to Rs. 115 cr from Rs. 75 cr in the last year. All the directors have been resigned from their post and new directors were appointed. Due to this financial crunch, company is unable to pay salary to its employees. Also, the company has taken huge amounts of Secured loans from Banks and various financial institution which they are unable to pay. Promoters have pledged their entire shareholding of 26% in order to pay their debts.

In this regard, draft a petition for Voluntary wind up by the Company to National Company Law Tribunal. Assume necessary facts.

E-FILING OF DOCUMENTS BEFORE NCLT & NCLAT

In the era of technological advancement, it is necessary for all the institutions and bodies to upgrade them according to the need of contemporaneous business and regulatory environment. Technology is required not only because of the contemporaneous business and regulatory environment but it also ease the processes.

In this direction, NCLT and NCLAT have also taken necessary steps to update themselves and make the system of access to justice for corporates and individuals convenient.

NCLAT vide order dated 15th May, 2023 has instructed that the Appeals / Interlocutory Applications / Reply/ Rejoinder etc. should be e-filed through e-filing portal. Further, the Competent Authority directed that the filing of hard copies of Appeals/ Interlocutory Applications/ Reply / Rejoinder etc. shall not be mandatory. The Standard Operating Procedures (SOPs)/ Orders/ Circulars/ Notices issued by the NCLAT from time to time regarding filing of Appeals/ Interlocutory Applications / Reply / Rejoinder etc. are also required to be read accordingly.

Both, NCLT and NCLAT have devised the systems to provide various services such as Daily Cause List, Case Status, Judgments, Daily orders etc, electronically through their respective websites. Further, NCLT and NCLAT are maintaining their e-filing portal at the link https://efiling.nclt.gov.in/mainPage.drt and https://efiling.nclat.gov.in/mainPage.drt respectively. This has made the work of professionals and Corporate much easier, faster and convenient.

LESSON ROUND-UP

- The Ministry of Corporate Affairs has notified the constitution of NCLT and NCLAT with effect from June 01, 2016. Consolidating the jurisdiction of Company Law Board, High Court and BIFR into a single forum i.e. NCLT, dedicated to Corporate matters, will remove the multi-fold governance.
- A document other than English language intended to be used in any proceeding before NCLT shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by authorised representative engaged on behalf of parties in the case or if the authorised representative engaged in the case authenticates such certificate or prepared by a translator approved for the purpose by the Registrar on payment of such charges as he may order.
- Where an appeal or application or petition or other proceeding purported to be instituted by or on behalf of an association, the person or persons who sign (s) or verify(ies) the same shall produce along with such application, for verification by the Registry, a true copy of the resolution of the association empowering such person(s) to do so.
- A petition shall be based upon a single cause of action and may seek one or more reliefs provided that the reliefs are consequential to one another.

- Where the respondent states such additional facts as may be necessary for the just decision of the case, the Bench may allow the petitioner to file a rejoinder to the reply filed by the respondent, with an advance copy to be served upon the respondent.
- In case of the scrutiny of the petitions or applications as provided in Part III and elsewhere in these rules, if any person is aggrieved of the decision of the Registrar or such other officer officiating as the Registrar of the Benches, an appeal against the order of the Registrar shall be made within fifteen days of the making of such order to the President of the Principal Bench and at other places to any Member of the Bench designated by the President, and whose decision thereon shall be final.
- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the NCLT to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.
- The offences, which are punishable with imprisonment only or imprisonment and fine, cannot be compounded.
- Every appeal against the order of the adjudicating officer shall be filed in writing with the Regional Director having jurisdiction in the matter within a period of sixty days from the date of receipt of the order of adjudicating officer by the aggrieved party, in Form ADJ setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought.
- Section 420 of the Companies Act, 2013 states that the National Company Law Tribunal may pass any orders it thinks fit, as long as it gives the parties before it, an opportunity of being heard. The powers of the Tribunal are, therefore, extremely wide and there are no restrictions on the kind of relief that it can grant in a particular case.
- Every interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in Form NCLAT-2 and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing a affidavit supporting the application.

GLOSSARY

Interlocutory application: Every Interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in prescribed form and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application.

Public Interest Litigation: It means a legal action filed for the interest of general public. It is a tool for safeguarding the socio economic rights and Judiciary has used it as a weapon against the wrongdoers.

Compounding: It may be sum up as a judicial settlement mechanism whereby the default is made good by paying the penalty in lieu of undergoing consequences of lengthy prosecution for the offence committed.

Opportunity to be heard: It means the chance to appear before a court or Tribunal to present evidence and argument before being punished by governmental authority.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Explain NCLT Rules in detail.
2. Describe Presentation of petition or appeal (Rule 23).
3. Explain Rule 35 of NCLT Rules regarding Advertisement detailing petition.
4. What are the Rights of a party to appear before NCLT and Consequence of non-appearance of applicant?
5. What are the some DO's and Don'ts for appearance before the Courts?
6. Explain the grounds/reasons on which a Public Company can refuse to register transfer of shares along with case law.
7. Explain Oppression And Mismanagement & Class Actions.
8. Define compounding of offences. Which types of offence can be Compounded?
9. Draft the petition of Mergers & Amalgamations? Assume necessary facts.

LIST OF FURTHER READINGS

- Chartered Secretary, The ICSI
- Articles written by professionals
- NCLT AND NCLAT – MANUAL, ICSI Publication

OTHER REFERENCES (Including Websites/Video Links)

- https://www.icsi.edu/home/cs/
- https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/rules.html
- https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/rules.html
- https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==

Adjudications and Appeals under SEBI Laws

Lesson 13

KEY CONCEPTS

■ Adjudication ■ Consent Order ■ Compounding ■ Securities Appellate Tribunal ■ Unpublished Price Sensitive Information ■ Show Cause Notice

Learning Objectives

To understand:

- Concept of Adjudication
- Adjudicating Authorities
- Procedure of Adjudication
- Penalties levied under SEBI Laws
- Compounding and Consent terms
- Settlement Proceedings
- Securities Appellate Tribunal

Lesson Outline

- Introduction
- Powers to issue directions and levy penalty under Section 11B
- Penalties under SEBI Laws
- Power to Adjudicate
- Procedure for Holding of Inquiry
- Factors to be taken into account while adjudging quantum of penalty
- Crediting sums realised by way of penalties to Consolidated Fund of India
- Rules under:
  - ✓ SEBI (Procedure for holding inquiry and imposing penalties) Rules, 1995,
  - ✓ Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005
  - ✓ Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005
- Recovery of amounts
- Continuance of proceedings
- Compounding Provisions Under:
  - ✓ The Securities And Exchange Board of India Act, 1992 ("SEBI Act"),
  - ✓ Securities Contracts (Regulation) Act, 1956 (SCRA) &
  - ✓ Depositories Act, 1996
- Settlement Proceedings / Consent Orders Under SEBI Laws-Applicable for Composition of Offences
- Settlement of administrative and civil proceedings
- Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018
- Securities Appellate Tribunal
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including websites / video links)

REGULATORY FRAMEWORK

- SEBI Act, 1992
- Securities Contracts (Regulation) Act, 1956
- Depositories Act, 1996
- SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995
- Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018
- Securities Appellate Tribunal (Procedure) Rules, 2000.

INTRODUCTION

Securities and Exchange Board of India was established in the year 1992, in accordance with the provisions of the SEBI Act, 1992 (**SEBI Act**), with a twofold objective of :

(a) protecting the interests of investors in securities; and

(b) promoting the development of and to regulate the securities market.

Within the universe of its enforcement powers, SEBI has the ability to trigger three distinct provisions of law:

– Issuing directions and levying penalties under Sections 11(4) and 11B of the SEBI Act (Section 11 & Section 11B),

– Adjudicatory powers under Sections 15A-15J of the SEBI Act (Section 15), and

– Enquiry proceedings in terms of the Section 12(3) of the SEBI Act [Section 12(3)].

In addition to this, SEBI is empowered to adjudicate and SAT is empowered to entertain appeals under Securities Exchange Board of India Act, 1992(SEBI Act) and Securities Contract (Regulations) Act, 1956 (SCRA).

SEBI is also empowered to initiate criminal proceedings under SEBI Act, 1992 and can regulate Stock Exchanges by virtue of SCRA.

Powers to issue directions and levy penalty under Section 11B of SEBI Act, 1992

Save as otherwise provided under section 11 of SEBI Act 1992, If after making or causing to be made an enquiry, the Board is satisfied that it is necessary, –

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 of SEBI Act, 1992 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person.

It may issue such directions, –

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A of SEBI Act, 1992, as may be appropriate in the interests of investors in securities and the securities market.

Explanation. – For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

The SEBI Act laid down the heavy penal consequences for non-compliance under section 15A to 15HB of the Act. However, the quantum of penalty and power of adjudication was provided under section 15I & J of the Act which has to be read along with sections pertaining to penal provisions.

Penalties under SEBI Act, 1992

Section	Particulars	Penalty
Section 15A	**Penalty for failure to furnish information, return, etc.** If any person, who is required under this Act or any rules or regulations made thereunder, – (a) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty: (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty: (c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty:	(a) which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees; (b) which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees; (c) which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 15B	**Penalty for failure by any person to enter into agreement with clients** If any person, who is registered as an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty :	● which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 15C	**Penalty for failure to redress investors' grievances.** If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing including by any means of electronic communication, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty:	● which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Section 15D	**Penalty for certain defaults in case of mutual funds** If any person, who is – (a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to: (b) registered with the Board as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration, he shall be liable to: (c) registered with the Board as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, he shall be liable to : (d) registered as a collective investment scheme, including mutual funds, fails to despatch unit certificates of any scheme in the manner provided in the regulation governing such despatch, he shall be liable to : (e) registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations, he shall be liable to: (f) registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, he shall be liable to :	(a) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees. (b) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. (c) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. (d) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. (e) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. (f) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 15E	**Penalty for failure to observe rules and regulations by an asset management company.** Where any asset management company of a mutual fund registered under this Act, fails to comply with any of the regulations providing for restrictions on the activities of the asset management companies, such asset management company shall be liable to:	● a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Section 15EA	**Penalty for default in case of alternative investment funds, infrastructure investment trusts and real estate investment trusts** Where any person fails to comply with the regulations made by the Board in respect of alternative investment funds, infrastructure investment trusts and real estate investment trusts or fails to comply with the directions issued by the Board, such person shall be liable to:	● penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees or three times the amount of gains made out of such failure, whichever is higher.
Section 15EB	**Penalty for default in case of investment adviser and research analyst.** Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to:	● penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 15F	**Penalty for default in case of stock brokers** If any person, who is registered as a stock broker under this Act, – (a) fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member, he shall be liable to: (b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, he shall be liable to : (c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to :	(a) a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees for which the contract note was required to be issued by that broker. (b) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. (c) a penalty which shall not be less than one lakh rupees but which may extend to five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.
Section 15G	**Penalty for insider trading.** If any insider who, – (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or	● penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

	(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a :	
Section 15H	**Penalty for non-disclosure of acquisition of shares and takeovers** If any person, who is required under this Act or any rules or regulations made thereunder, fails to, – (i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or (ii) make a public announcement to acquire shares at a minimum price; or (iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or (iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer, he shall be liable to:	● a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.
Section 15HA	**Penalty for fraudulent and unfair trade practices.** If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to:	● penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.
Section 15HAA	**Penalty for alteration, destruction, etc., of records and failure to protect the electronic database of Board** Any person, who – (a) knowingly alters, destroys, mutilates, conceals, falsifies, or makes a false entry in any information, record, document (including electronic records), which is required under this Act or any rules or regulations made thereunder, so as to impede, obstruct, or influence the investigation, inquiry, audit, inspection or proper administration of any matter within the jurisdiction of the Board.	● a penalty which shall not be less than one lakh rupees but which may extend to ten crore rupees or three times the amount of profits made out of such act, whichever is higher. *Explanation*. – In this section, the expressions "computer contaminant", "computer virus" and "damage" shall have the meanings respectively assigned to them undersection 43 of the Information Technology Act, 2000.

	Explanation. – For the purposes of this clause, a person shall be deemed to have altered, concealed or destroyed such information, record or document, in case he knowingly fails to immediately report the matter to the Board or fails to preserve the same till such information continues to be relevant to any investigation, inquiry, audit, inspection or proceeding, which may be initiated by the Board and conclusion thereof; (b) without being authorised to do so, access or tries to access, or denies of access or modifies access parameters, to the regulatory data in the database; (c) without being authorised to do so, downloads, extracts, copies, or reproduces in any form the regulatory data maintained in the system database; (d) knowingly introduces any computer virus or other computer contaminant into the system database and brings out a trading halt; (e) without authorisation disrupts the functioning of system database; (f) knowingly damages, destroys, deletes, alters, diminishes in value or utility, or affects by any means, the regulatory data in the system database; or (g) knowingly provides any assistance to or causes any other person to do any of the acts specified in clauses (a) to (f), shall be liable to:	
Section 15HB	**Penalty for contravention where no separate penalty has been provided.** Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to:	● penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Penalties under Securities Contracts (Regulations) Act, 1956

Section	Particulars	Penalty
Section 23	(1) Any person who- (a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (4) of section 6; or (b) enters into any contract in contravention of any of the provisions contained in section 13 or section 16; or (c) contravenes the provisions contained in section 17 or section 17A, or section 19; or (d) enters into any contract in derivative in contravention of section 18A or the rules made under section 30; (e) owns or keeps a place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes; or (f) manages, controls, or assists in keeping any place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act or at which contracts are recorded or adjusted or rights or liabilities arising out of contracts are adjusted, regulated or enforced in any manner whatsoever; or (g) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17 wilfully represents to or induces any person to believe that contracts can be entered into or performed under this Act through him; or (h) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17, canvasses, advertises or touts in any manner either for himself or on behalf of any other persons for any business connected with contracts in contravention of any of the provisions of this Act; or	● shall, without prejudice to any award of penalty by the Adjudicating Officer or the Securities and Exchange Board of India under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both.

	(i) joins, gathers or assists in gathering at any place other than the place of business specified in the bye-laws of a recognised stock exchange any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act; (2) Any person who enters into any contract in contravention of the provisions contained in section 15 or who fails to comply with the provisions of section 21 or section 21A or with the orders of or section 22 or with the orders of the Securities Appellate Tribunal shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction:	
Section 23A	**Penalty for failure to furnish information, return, etc.** Any person, who is required under this Act or any rules made thereunder, – (a) to furnish any information, document, books, returns or report to the recognised stock exchange or to the Board, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange or the Act or rules made thereunder, or who furnishes false, incorrect or incomplete information, document, books, return or report, shall be liable to: (b) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, shall be liable to :	(a) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for each such failure; (b) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 23B	**Penalty for failure by any person to enter into an agreement with clients** If any person, who is required under this Act or any bye-laws of a recognised stock exchange made thereunder, to enter into an agreement with his client, fails to enter into such an agreement, he shall be liable to	● a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for every such failure.
Section 23C	**Penalty for failure to redress investors' grievances.** If any stock broker or sub-broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, after having been called upon by the Securities and Exchange Board of India or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time stipulated by the Securities and Exchange Board of India or a recognised stock exchange, he or it shall be liable to:	● penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Section 23D	**Penalty for failure to segregate securities or moneys of client or clients** If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to:	● penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.
Section 23E	**Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds** If a company or any person managing collective investment scheme or mutual fund or real estate investment trust or infrastructure investment trust or alternative investment fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to:	● penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.
Section 23F	**Penalty for excess dematerialisation or delivery of unlisted securities.** If any issuer dematerialises securities more than the issued securities of a company or delivers in the stock exchanges the securities which are not listed in the recognised stock exchange or delivers securities where no trading permission has been given by the recognised stock exchange, he shall be liable to:	● a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.
Section 23 G	**Penalty for failure to furnish periodical returns, etc.** If a recognised stock exchange fails or neglects to furnish periodical returns or furnishes false, incorrect or incomplete periodical returns to the Securities and Exchange Board of India or fails or neglects to make or amend its rules or bye-laws as directed by the Securities and Exchange Board of India or fails to comply with directions issued by the Securities and Exchange Board of India, such recognised stock exchange shall be liable to:	● a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.
Section 23GA	**Penalty for failure to conduct business in accordance with rules, etc**. Where a stock exchange or a clearing corporation fails to conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act, the stock exchange or the clearing corporations, as the case may be, shall be liable to :	● penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher.

Section 23H	**Penalty for contravention where no separate penalty has been provided.** Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to :	● penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Penalties under Depositories Act, 1996

Section	Particulars	Penalty
Section 19A	**Penalty for failure to furnish information, return, etc.** Any person, who is required under this Act or any rules or regulations or bye-laws made thereunder, – (a) to furnish any information, document, books, returns or report to the Board, fails to furnish the same within the time specified therefor, or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents he shall be liable to: (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations or bye-laws, fails to file return or furnish the same within the time specified therefor, he or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents shall be liable to: (c) to maintain books of account or records, fails to maintain the same, he shall be liable to:	(a) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for each such failure. (b) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees. (c) a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 19B	**Penalty for failure to enter into an agreement.** If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, and is required under this Act or any rules or regulations made thereunder, to enter into an agreement, fails to enter into such agreement, such depository or participant or issuer or its agent or intermediary shall be liable to:	● a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for every such failure.

Section 19C	**Penalty for failure to redress investors' grievances.** If any depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, after having been called upon by the Board in writing, to redress the grievances of the investors, fails to redress such grievances within the time specified by the Board, such depository or participant or issuer or its agents or intermediary shall be liable to:	● a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 19D	**Penalty for delay in dematerialisation or issue of certificate of securities.** If any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, fails to dematerialise or issue the certificate of securities on opting out of a depository by the investors, within the time specified under this Act or regulations or bye-laws made thereunder or abets in delaying the process of dematerialisation or issue the certificate of securities on opting out of a depository of securities, such issuer or its agent or intermediary shall be liable to:	● a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 19E	**Penalty for failure to reconcile records.** If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, fails to reconcile the records of dematerialised securities with all the securities issued by the issuer as specified in the regulations, such depository or participant or issuer or its agent or intermediary shall be liable to:	● a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 19F	**Penalty for failure to comply with directions issued by Board under section 19 of the Act.** If any person fails to comply with the directions issued by the Board under section 19, within the time specified by it, he shall be liable to:	● a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 19 FA	**Penalty for failure to conduct business in a fair manner** Where a depository fails to conduct its business with its participants or any issuer or its agent or any person associated with the securities markets in a fair manner in accordance with the rules, regulations made by the Board or directions issued by the Board under this Act, it shall be liable to:	● a penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher.

Section 19G	**Penalty for contravention where no separate penalty has been provided.** Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to:	● a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Non-compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

SEBI vide its various circulars dated November 30, 2015, October 26, 2016 and May 13, 2018 laid down the framework for imposing penalty and taking action against such listed entities which violate the provisions of the SEBI Listing Regulations. Considering the various amendments under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 pursuant to the Kotak Committee recommendations, SEBI thought fit to bring yet another circular making amendments to the existing framework. The circular dated January 22, 2020, is in supersession to the earlier circular dated May 13, 2018. Further as per SEBI circular dated March 26, 2020 ref no.

SEBI/HO/CFD/CMD1/CIR/P/2020/48 the circular dated January 22, 2020 shall come into force with effect from compliance periods ending on or after June 30, 2020. Therefore, June 30, 2020 is the 1st quarter for monitoring of non-compliant companies as per provisions of circular dated January 22, 2020.

SEBI vide circular dated January 22, 2020 (ref no. SEBI/HO/CFD/CMD/CIR/P/2020/12) have specified uniform approach in the matter of levy of fines for non-compliance with certain provisions of the Listing Regulations, the manner of suspension of trading of securities of a listed entity and the manner of freezing the holdings of the promoter of a non-compliant listed entity.

The recognized stock exchanges shall take action for non-compliance with the provisions of the Listing Regulations & circulars/guidelines issued thereunder, by a listed entity as under:

Sl. No.	*Regulations under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015*	*Fine payable and/or other action to be taken for non-compliance in respect of listed entity*
1.	**Regulation 6(1)** Non-compliance with requirement to appoint a qualified company secretary as the compliance officer	Rs. 1000 per day
2.	**Regulation 7(1)** Non-compliance with requirement to appoint share transfer agent	Rs. 1000 per day
3.	**Regulation 13(1)** Failure to ensure that adequate steps are taken for expeditious redressal of investor complaints	Rs. 1000 per day
4.	**Regulation 13(3)** Non-submission of the statement on shareholder complaints within the period prescribed under this regulation or under any circular issued in respect of redressal of investor grievances	Rs. 1000 per day

Sl. No.	*Regulations under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015*	*Fine payable and/or other action to be taken for non-compliance in respect of listed entity*
5.	**Regulation 17(1)** Non-compliance with the requirements pertaining to the composition of the Board including failure to appoint woman director	Rs. 5000 per day
6.	**Regulation 17(1A)** Non-compliance with the requirements pertaining to appointment or continuation of Non-executive director who has attained the age of seventy five years	Rs. 2000 per day
7.	**Regulation 17(2)** Non-compliance with the requirements pertaining to the number of Board meetings	Rs. 10,000 per instance
8.	**Regulation 17(2A)** Non-compliance with the requirements pertaining to quorum of Board meetings.	Rs. 10,000 per instance
9.	**Regulation 18(1)** Non-compliance with the constitution of audit committee	Rs. 2000 per day
10.	**Regulation 19(1)/ 19(2)** Non-compliance with the constitution of nomination and remuneration committee	Rs. 2000 per day
11.	**Regulation 20(2) / (2A)** Non-compliance with the constitution of stakeholder relationship committee	Rs. 2000 per day
12.	**Regulation 21(2)** Non-compliance with the constitution of risk management committee	Rs. 2000 per day
13.	**Regulation 23(9)** Non-compliance with disclosure of related party transactions on consolidated basis.	Rs. 5000 per day
14.	**Regulation 24A** Non-compliance with submission of secretarial compliance report	Rs. 2000 per day
15.	**Regulation 27(2)** Non-submission of the Corporate governance compliance report within the period provided under this regulation	Rs. 2000 per day

Sl. No.	***Regulations under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015***	***Fine payable and/or other action to be taken for non-compliance in respect of listed entity***
16.	**Regulation 28 (1)** Non-compliance with obtaining in-principle approval of stock exchange(s) before issuance of securities	Rs. 50,000 per instance
17.	**Regulation 29(2)/29(3)** Delay in furnishing prior intimation about the meeting of the board of directors	Rs. 10,000 per instance of non-compliance per item
18.	**Regulation 31** Non-submission of shareholding pattern within the period prescribed	Rs.2000 per day
19.	**Regulation 31A(3)(a)** Non-compliance pertaining to delay in submission of reclassification application to stock exchanges	Rs. 5,000 per day
20.	**Regulation 32(1)** Non-submission of deviations/ variations in utilization of issue proceeds	Rs.1000 per day
21.	**Regulation 33** Non-submission of the financial results within the period prescribed under this regulation (Levy of fine is in addition to the requirement of providing reasons for non-submission of the financial result as per circular no. CIR/CFD/CMD-1/142/2018 dated November 19, 2018)	Rs. 5,000 per day
22.	**Regulation 34** Non-submission of the Annual Report within the period prescribed under this regulation	Rs. 2,000 per day
23.	**Regulation 42(2)/42(3)/ 42(4)/42(5)** Delay in/ non-disclosure of record date/ dividend declaration or non-compliance with ensuring the prescribed time gap between two record dates/ book closure dates	Rs. 10,000 per instance of non-compliance per item
24.	**Regulation 43A** Non-disclosure of Dividend Distribution Policy in the Annual Report and on the websites of the entity	Rs. 25,000 per instance

Sl. No.	*Regulations under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015*	*Fine payable and/or other action to be taken for non-compliance in respect of listed entity*
25.	**Regulation 44(3)** Non-submission of the voting results within the period provided under this regulation	Rs. 10,000 per instance of non-compliance
26.	**Regulation 44(5)** Non-convening of annual general meeting within a period of five months from the close of financial year	Rs. 25,000 per instance
27.	**Regulation 45(3)** Non-obtaining approval of stock exchange(s) before filing request for change of name with Registrar of Companies	Rs. 25,000 per instance
28.	**Regulation 46** Non-compliance with norms pertaining to functional website	Advisory/warning letter per instance of non-compliance per item Rs. 10,000 per instance for every additional advisory/ warning letter exceeding the four advisory/ warning letters in a financial year

Fine to be levied in case of non-compliance(s) by issuers of listed Non-convertible Securities w.e.f. August 01, 2022

The recognized stock exchanges is required to take action for non-compliance with the provisions of the SEBI LODR Regulations & circulars/ guidelines issued thereunder, by an entity having listed Non-Convertible Securities, as under:

Sl. No.	*Regulation*	*Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed its Non-Convertible Securities*
1.	**Regulation 6(1)** Non-compliance with requirement to appoint a qualified company secretary as the compliance officer	Rs.1000 per day
2.	**Regulation 7(1)** Non-compliance with requirement to appoint share transfer agent.	Rs.1000 per day
3.	**Regulation 13(1)** Failure to ensure that adequate steps are taken for expeditious redress of investor complaints	Rs.1000 per day

Sl. No.	*Regulation*	*Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed its Non-Convertible Securities*
4.	**Regulation 13(3)** Non-submission of the statement on debenture holder complaints within the period prescribed under this regulation or under any circular issued in respect of redress of investor grievances	Rs.1000 per day
5.	**Regulation 50(1)** Delay in furnishing intimation about board meeting.	Rs. 5,000 per instance of non-compliance per item
6.	**Regulation 50(2)** Delay in furnishing intimation about meeting of shareholders or holders of non-convertible securities	Rs. 5,000 per instance of non-compliance per item
7.	**Regulation 52(1) / 52(2)(a) / 52(2)(d) / 52(2)(f)** Non-submission of quarterly and year to date standalone financial results on a quarterly basis within the period prescribed under this Regulation under Regulation 52(1)/ Unaudited financial results submitted without limited review report under Regulation 52(2)(a)/ Non-submission of annual audited standalone and consolidated financial results within the period prescribed under Regulation 52(2)(d)/ Non-submission of statement of assets & liabilities and cash flow statement as required under Regulation 52(2)(f)	Rs. 5,000 per day
8.	**Regulation 52(4) / 52(6)** Non-disclosure of line items prescribed under Regulation 52(4) along with the quarterly / annual financial results / non-disclosure of items pertaining to non-convertible securities as prescribed under Regulation 52(6) as notes to financials	Rs. 1,000 per day
9.	**Regulation 52(7)/ (7A)** Non-submission of statement indicating the utilization of issue proceeds/ material deviation in the use of proceeds	Rs. 1,000 per day
10.	**Regulation 53(2)** Non-submission of annual report within the period prescribed under this regulation.	Rs. 2,000 per day
11.	**Regulation 54 (2)/ (3)** Non-disclosure of extent and nature of security created and maintained with respect to secured listed non-convertible debt securities in the financial statements	Rs. 1,000 per day

Sl. No.	***Regulation***	***Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed its Non-Convertible Securities***
12.	**Regulation 57(1)** Non-disclosure of information related to payment obligations.	Rs. 2,000 per day per ISIN
13.	**Regulation 57(4)** Non-submission of details of payable interest/dividend/principal obligations during the quarter	Rs. 1,000 per ISIN
14.	**Regulation 57(5)** Non-submission of certificate confirming the payment of interest/ dividend/principal obligations due in the quarter or non-submission of details of all unpaid interest/dividend/principal obligations at the end of the quarter	Rs. 1,000 per ISIN
15.	**Regulation 59 (1)** Failure to obtain prior approval of stock exchange for any structural change in non-convertible securities	Rs. 50,000 per instance
16.	**Regulation 60 (2)** Delay in submission of the notice of record date	Rs. 10,000 per ISIN
17.	**Regulation 62** Non-compliance with norms pertaining to functional website	Advisory/warning letter per instance of non-compliance per item Rs. 10,000 per instance for every additional advisory/ warning letter exceeding the four advisory/ warning letters in a financial year.
Fine to be levied in case of non-compliances by issuers of listed Commercial Papers		
Sl. No.	***Clause***	***Fine payable and/ or other action to be taken for non-compliance in respect of an entity having listed Commercial Paper***
1.	Non-submission of financial results within the prescribed period	Rs. 5,000 per day
2.	Non-disclosure of line items prescribed under Regulation 52(4) of SEBI LODR Regulations along with the financial results	Rs. 1,000 per day
3.	Non-submission of certificate regarding fulfillment of payment obligations	Rs. 1,000 per day per ISIN

CASE STUDY

Century Enka Limited **vs.** ***Securities and Exchange Board of India & Ors*****. before SAT (Dated 25.03.2022)**

The facts leading to the filing of the present appeal is, that Mr. B. K. Birla was a non-independent non-executive director in the appellant company and died on July 3, 2019 thereby causing a vacancy in the board of directors. This vacancy was required to be filled up and eventually an independent director was appointed on February 5, 2020.

Admittedly, after July 3, 2019 on account of demise of Mr. B.K. Birla, the composition of the board of directors reduced from 6 to 5 directors. The vacancy so caused was eventually filled up on February 5, 2020.

For the aforesaid period from July 4, 2019 to February 5, 2020 on account of non-compliance of the Regulation 17(1) of the LODR Regulations, BSE and NSE has imposed a fine for the quarter ended December 31, 2019 and again for the quarter ended March 31, 2020 under circular dated May 3, 2018 issued by SEBI as under:

Regulation	***Fine payable and / or other action to be taken for non-compliance in respect of listed entity***
Regulation 17(1) Non-compliance with the requirements pertaining to the composition of the Board including failure to appoint woman director	Rs. 5000/- per day

The appellant being aggrieved filed an application before SEBI for waiver of the fine which was rejected by SEBI by an order dated June 30, 2021.

The stock exchanges in their orders have levied a fine holding that the exchange has decided to provide a period of three months or time till the next board meeting whichever is later to enable the companies to fill the vacancy in consonance with the provisions of Regulation 25(6) of the LODR Regulations and since the appellant failed to fill the vacancy within three months, the penalty has been imposed from October 3, 2019 under Regulation 17 of the LODR Regulations. The same view was taken by SEBI in its order of June 30, 2021.

Order

It is observed that the approach adopted by the respondent is totally illegal and against the provisions of law. The provisions under the LODR Regulations are required to be complied by the companies including the appellant. Non-compliance of various provisions may entail imposition of fine as per the circular dated May 3, 2018. This circular has been issued in exercise of the powers under Section 11A(2) of the Securities and Exchange Board of India Act, 1992(hereinafter referred to as ‘SEBI Act’) read with Sections 9 and 21 of Securities Contract (Regulations) Act, 1956 (hereinafter referred to as ‘SCR Act’) and read with Regulation 98 of the LODR Regulations. This circular has the force of law. Under Annexure I to the circular a fine of Rs. 5,000/- per day can be imposed for non-compliance of Regulation 17(1) of the LODR Regulations.

Regulation 17(1) states that the board of directors shall comprise of not less than 6 directors. If there are less than 6 directors, the said regulation is violated and fine can be imposed but the question is that there is no time line provided under Regulation 17(1) to fill the vacancy caused by the reason of death, resignation, etc. If no time line is provided, the question of imposition of fine at the rate of Rs.5,000/- per day does not arise.

In this regard, Regulation 25(6) of the LODR Regulations provides certain obligations with respect to independent directors, namely, that where an independent director who resigns or is removed from the board of directors, the said independent director would be replaced by a new independent director at the earliest but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy whichever is later. Such provision is missing under Regulation 17(1). Consequently, so long as the period of filing the vacancy in the board of directors under Regulation 17(1) is not framed, no fine could be imposed.

Further, the exchange cannot on its own take a decision for imposition of fine. Fine can only be imposed by statutes or by circular which has the force of law. In the instant case, nothing has been brought on record to show that the stock exchange has the power to frame such laws nor anything has been brought on record to indicate that SEBI has framed such laws under Section 11A of the SEBI Act read with Sections 9 and 21 of the SCR Act and read with Regulation 98 of the LODR Regulations.

Thus, the impugned orders cannot be sustained and are quashed.

CASE STUDY

Ignorance of law is not an excuse for escaping from liability of violation of law

The Appellant, Mega Resources Limited, is aggrieved by the order dated 13.08.2014 passed by the Adjudicating Officer, SEBI imposing a penalty of Rs. 2,00,000/- under Section 15A(b) of the SEBI Act and Rs. 50,00,000/- under Section 15 H(ii) of the SEBI Act for failure on the part of the appellant to comply with the provisions of Regulation 7(1) read with Regulation 7(2) and Regulation 11(1) read with Regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

The appellant has admitted that pursuant to the acquisition of 25000 equity shares through off-market transactions the shareholding of the Promoters/Promoter Group of the Company had increased from 50.46% to 60.46% of the Target Company. This triggered Regulation 11(1) of the erstwhile SAST Regulations along with the requirement of submission of certain disclosures under Regulation 7(1) and 7(2) of the erstwhile Regulations. It is admitted by the appellant that the non-compliance with the disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any *malafide* intentions.

However, it is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law nor ever absolve the wrongdoer of his crime or misconduct. Further, the appellant contended that in the matter of imposition of penalty, the Section 15(H)(ii) of the SEBI Act, 1992 was amended dated October 29, 2002 and the penalty for non-disclosure of acquisition of shares and takeovers was enhanced from a maximum of Rs.5 lakh to Rs.25 crore. It is argued that since the violation in Appeal was committed in February, 2001, the appellant would be governed by the erstwhile provisions of Section 15H(ii) of the SEBI Act, which existed on the date of violation in question.

Decision:

It is true that the maximum monetary penalty imposable for non-disclosure of acquisition of shares and takeovers under the erstwhile SEBI Act on the date of violation by the Appellant was Rs. 5 Lakh and by the amendment dated October 29, 2002 it is up to Rs. 25 Crore or three times of the amount of profits made out of such failure, whichever is higher. However, the moot point in this connection to be noted is that as on October 29, 2002 the obligation to make disclosure and public announcement under Regulations 7(1) read with 7(2) and 11(1) read with 14(1) continued. Therefore, because the violation was continued even after October 29, 2002, the appellant has been rightly imposed penalty under the amended provisions of Section 15H(ii) of the SEBI Act.

Since the punishment imposable now for such non-disclosure and public announcement is up to Rs. 25 Crore, SAT finds that the penalty of Rs. 50 Lakh is just and reasonable and not disproportionate. The contention of the appellant in this regard is, therefore, liable to be turned down. Therefore, in the peculiarity of the facts and circumstances of the case and, in particular, the continuity of the obligation to make disclosure and public announcement, the penalty of Rs. 50 lakh is upheld and the appeal is dismissed.

Power to Adjudicate under SEBI Act, 1992 (Section 15I), Section 23I of Securities Contracts (Regulations) Act, 1956 and Section 19H of Depositories Act, 1996

For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G,15H, 15HA and 15HB of SEBI Act, 1992, Sections 23A, 23B, 23C, 23D, 23E, 23F,23G and 23H of Securities Contracts (Regulations) Act, 1956 and Section 19A, 19B, 19C, 19D, 19E, 19F, 19FA and 19G of Depositories Act, 1996 :

- **Appointment of Adjudicating Officer**: The Securities and Exchange Board of India may appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

- **Power of Adjudicating Officer** : While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections as specified above, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

- **Call of Record by SEBI**- The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify.

- **Opportunity of being heard:** No such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter.

- **Limitation period:** Nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T of SEBI Act, 1992, section 23L of Securities Contract (Regulation) Act, 1956 and section 23A of Depositories Act, 1996 whichever is earlier.

Therefore, it can be summed-up that the following powers can be exercised by the adjudicating officer:

1. *Holding an inquiry.*
2. *Imposing penalty.*
3. *Power to summon.*
4. *Power to enforce the attendance of any person acquainted with the facts.*

Procedure for Holding of Inquiry [Rule 4 of SEBI (Procedure for holding inquiry and imposing penalties) Rules, 1995, Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005

(1) **Show Cause Notice**: In holding an inquiry for the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB,15F, 15G, 15HA and 15HB of SEBI Act, 1992 sections 23A, 23B, 23C, 23D, 23E, 23F,23G, 23GA and 23H of Securities Contract (Regulation) Act, 195 and Sections 19A, 19B, 19C, 19D,19E, 19F, 19FA and 19G of Depositories Act, 1992, whether any person has committed contraventions as specified in any of sections mentioned above, the SEBI(Board) or the adjudicating officer shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him.

(2) **Content of Notice**: Every notice under sub-rule (1) to any such person shall indicate the nature of offence alleged to have been committed by him.

(3) **Date of Appearance:** If, after considering the cause, if any, shown by such person, the Board or the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) **Personal Hearing**: On the date fixed, the Board or the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.

(5) **Opportunity to produce Evidence**: The Board or the adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the Board or the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872 :

The notice referred to in sub-rule (3), and the personal hearing referred to in sub-rules (3), (4) and (5) may, at the request of the person concerned, be waived.

(5A) **Appointment of Presenting Officer:** The Board may appoint a presenting officer in an inquiry under this rule.

(6) **Enforcement of Attendance:** While holding an inquiry under this rule the Board or the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the Board or the adjudicating officer, may be useful for or relevant to, the subject-matter of the inquiry.

(7) **Consequences of failure to appeal:** If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

Factors to be taken into account while adjudging quantum of penalty (Section 15J of SEBI Act & Section 23 J of Securities Contracts (Regulations) Act, 1956 and Section 19-I of Depositories Act, 1996)

While adjudging quantum of penalty under section 15-I or section 11 or section 11B of SEBI Act, 1992 section 12A or section 23-I of Securities Contracts (Regulations) Act, 1956 and section 19 or section 19H of Depositories Act, 1996, the Board or the adjudicating officer shall have due regard to the following factors, namely : –

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation. – For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA of SEBI Act, 1992 section 23A to 23C of Securities Contracts (Regulations) Act, 1956 and sections 19A to 19F of Depositories Act, 1996 shall be and shall always be deemed to have been exercised under the provisions of this section.

Example 1: Synchronised Trading:

SEBI suspected manipulation in the trading of Futures & Options segment (F&O), and found that the company and some other firms had undertaken fictitious trades.

- **Order of Adjudicating Officer**

  According to the A.O., a manipulative/deceptive devise had been used for synchronization and reversal of trades and the trades were essentially fraudulent/fictitious in nature and resulted in creating a misleading appearance of active trading in those securities.

- **Judgement of SAT**

  However, the Order was struck down by the Securities Appellate Tribunal (SAT) in 2011 on grounds that synchronization and reversal of trades effected by the parties with a significant price difference, some in a few seconds and majority, in any case, on the same day had no impact on the market, had not affected the NIFTY index in any manner nor induced investors. SAT held that such trades are illegal only when they manipulate the market in any manner and induce investors.

- **Judgement of Supreme Court**

  It was held that the trade reversals in the instant case amply demonstrated that the parties did not intend to transfer beneficial ownership through these transactions. Rather, the repeated reversals adversely affected the price discovery system, deprived other market players from participating in the trades, were a misuse of market mechanism and therefore violative of transparent norms of trading in securities.

Considering the perfect matching of quantity, price and time and sale in the impugned transactions, parties being persistent in the number of such trade transactions with huge price variations (without any major variation in the price of the underlying securities) wherein one party repeatedly booked profits whilst the other repeatedly incurred losses, the Supreme Court noted that it would be too naïve to hold that such transactions were by mere coincidence.

CASE LAWS

In the case of *SEBI v. Bhavesh Pabari,* a full bench of the Hon'ble Supreme Court held that an AO has the right and discretion to determine the quantum of fine when any provisions specified in the SEBI Act or SCRA are not complied with.

The decision broadened the application of Section 15J of the SEBI Act and highlighted that the three reasons listed therein must only be regarded as illustrative and not exhaustive in nature, hence allowing the AO to assess the punishment after a consideration of all aggravating and mitigating factors. This decision has evolved considerably over the years, to now recognise the ability of AOs to not impose penalties at all, even in cases where a non-compliance is identified, but is not significant enough to merit a penalty.

Crediting sums realised by way of penalties to Consolidated Fund of India [Section 15JA of SEBI Act, 1992, Section 23K of Securities Contracts (Regulations) Act, 1956 and 19J of Depositories Act, 1996]

All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Order of the Board or the adjudicating officer [Rule 5 of SEBI (Procedure for holding inquiry and imposing penalties) Rules, 1995, Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005]

(1) **Imposition of Penalty:** If, upon consideration of the evidence produced before the Board or the adjudicating officer, the Board or the adjudicating officer is satisfied that the person has become liable to penalty under any of the sections specified in sub-section (1) of sub-section (4A) of section 11 or sub-section (2) of section 11B or section 15-I of the SEBI Act, 1992, sub-section (1) or sub-section (2) of section 19 or section 19H of the Depositories Act, 1996 or sub-section (1) or sub-section (2) of section 12A or section 23-I of the Securities Contracts (Regulations) Act, 1956, he may, by order in writing, impose such penalty as he thinks fit in accordance with the provisions of the relevant sections.

(2) **Quantum of Penalty:** While adjudging the quantum of penalty as stipulated under the above mentioned sections, the Board or the adjudicating officer shall have due regard to the following factors, namely : –

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default ;

(b) the amount of loss caused to an investor or group of investors as a result of the default ;

(c) the repetitive nature of the default.

(3) **Content of Order**: Every order made under sub-rule (1) shall specify the provisions of the Act in respect of which default has taken place and shall contain brief reasons for such decisions.

(4) **Date & Sign:** Every such order shall be dated and signed by the Board or the adjudicating officer.

(5) **Rectification of Error:** The Board or the adjudicating officer who has passed an order, may rectify any error apparent on the face of record on such order, either on its own motion or where such error is brought to his notice by the affected person within a period of fifteen days from the date of such order.

Explanation: For the purpose of this rule, "error apparent on the face of record" shall mean any typographical errors that creep in inadvertently into the order and includes such other errors that do not require a long drawn out reasoning process to ascertain such a mistake.

CASE LAWS

In the matter of Mahamaya Steel Industries Limited (BEFORE THE ADJUDICATING OFFICER SECURITIES AND EXCHANGE BOARD OF INDIA), dated October 05, 2018

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 ("SEBI ACT") READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Facts of the Case

Securities and Exchange Board of India pursuant to BSE report, observed that some promoters of Mahamaya Steel Industries Limited undertook certain transactions in the shares of the Company during 2016 for which disclosures were required to be made under regulation 7(2)(a) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations"). However, it was observed that one of the promoters (hereinafter referred to as "Noticee") failed to comply with the disclosure requirements under PIT Regulations.

In the instant matter, the following issues arise for consideration and determination:-

(a) Whether the Noticee have violated the provisions of regulations 7(2)(a) of PIT Regulations?

(b) Do the violation, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act for the alleged violation?; and,

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

The Noticee had submitted that she is not a promoter but she is a part of the promoter group as per the definition provided in 2(zb) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. However, on perusal of the website of BSE, it is observed that the Noticee had herself made disclosures under the promoter category under regulation 7(2) read with 6(2) of PIT Regulations.

Regulation 6(2) of the PIT Regulations states that: "The disclosures to be made by any person under this Chapter shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions."

This provision clearly shows that intent of the legislation. It is not only the promoters, but all those who are related to them may be privy to unpublished price sensitive information and are required to disclose the change in their shareholding to the public. In such situations, we cannot take the narrow interpretation of the provision and excuse the Noticee considering that she is not a promoter but part of the promoter group. As she is the spouse of one of the promoters, viz. Anand Kumar Agrawal, she was liable to make disclosures under regulation 7(2)(a) of PIT Regulations. Moreover, she had been making disclosures under PIT Regulations as promoter.

Order

In view of the above, it is established that the Noticee did not comply with regulation 7(2)(a) of PIT Regulations.

The Hon'ble Supreme Court of India in the matter of *SEBI* Vs. *Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...".

In view of the above, it is established that the Noticee did not comply with regulation 7(2)(a) of PIT Regulations. Therefore, Noticee is liable for a penalty under section 15 A(b) of SEBI Act.

After examination, it did not bring out the disproportionate gain or unfair advantages to the Noticee and loss caused to investors as a result of non-disclosure of change of shareholding. The Noticee failed to make the relevant disclosure on more than one occasion. Hence it can be said that the violation is repetitive in nature.

In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of section 15-J of the SEBI Act, in exercise of the powers conferred upon under section 15-I (2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticee stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, monetary penalty is imposed under section 15A (b) of SEBI Act of Rs. 2,00,000/- (Rupees Two Lakh only) for violation of regulation 7(2)(a) of PIT Regulations.

Copy of the Order [Rule 6 of SEBI (Procedure for holding inquiry and imposing penalties) Rules, 1995, Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005]

The Board or the adjudicating officer shall send a copy of every order made under rules by it to the person concerned and to the Board.

Service of notices and orders [Rule 7 of SEBI (Procedure for holding inquiry and imposing penalties) Rules, 1995, Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005]

(1) A notice or an order issued under these rules shall be served on the person through any of the following modes, namely:–

  (a) by delivering or tendering it to that person or his duly authorised agent; or

  (b) by sending it to the person by fax or electronic mail or electronic instant messaging services along with electronic mail or by courier or speed post or registered post:

  Provided that the courier or speed post or registered post shall be sent to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain, with acknowledgment due:

  Provided further that a notice sent by fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned:

  Provided also that a notice sent through electronic mail or electronic instant messaging services along with electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service.

(2) In case of failure to serve a notice or an order through any one of the modes provided under sub-rule (1), the notice or order may be affixed on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided, or carried on business or personally works, or last worked, for gain and a written report thereof shall be prepared in the presence of two witnesses.

(3) In case of failure to affix the notice or order on the outer door as provided under sub-rule (2), the notice or order shall be published in at least two newspapers, one of which shall be in an English daily

newspaper having nationwide circulation and another shall be in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.

Recovery of amounts [Section 28A of SEBI Act, 1992, Section 23 JB of Securities Contract (Regulation) Act, 1956 and Section 19-IB Depositories Act, 1996]

1) If a person fails to pay the penalty imposed under SEBI Act 1992, Securities Contract (Regulation) Act, 1956 and Depositories Act, 1996 or fails to comply with a direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B of SEBI Act 1992, section 12A of Securities Contract (Regulation) Act, 1956 and section 19 of Depositories Act, 1996 or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely: –

    (a) attachment and sale of the person's movable property;

    (b) attachment of the person's bank accounts;

    (c) attachment and sale of the person's immovable property;

    (d) arrest of the person and his detention in prison;

    (e) appointing a receiver for the management of the person's movable and immovable properties,

    and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

    Explanation 1. – For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

    Explanation 2. – Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

    Explanation 3. – Any reference to appeal in Chapter XVIID and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of SEBI Act, section 23 L of Securities Contract (Regulation) Act, 1956 and section 23A of Depositories Act, 1996.

    Explanation 4. – The interest referred to in section 220 of the Income-tax Act, 1961 shall commence from the date the amount became payable by the person.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B of SEBI Act, section 12A of Securities Contract (Regulation) Act, 1956 and section 19 of Depositories Act, 1996, shall have precedence over any other claim against such person.

(4) For the purposes of sub-sections (1), (2) and (3), the expression ''Recovery Officer'' means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

Continuance of proceedings [Section 28B of SEBI Act, 1992, Section 23 JC of Securities Contract (Regulation) Act, 1956 and Section 19-IC of Depositories Act, 1996]

(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased:

Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

(2) For the purposes of sub-section (1), –

(a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death, shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly;

(b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.

(3) Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(4) The liability of a legal representative under this section shall be limited to the extent to which the estate of the deceased is capable of meeting the liability.

Explanation. – For the purposes of this section “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

CASE LAWS

Case Laws on Insider Trading

In Re Sun Infoways Limited, the said appeal was filed against the order dated November 6, 2006 passed by the Adjudicating Officer, SEBI. The Adjudicating Officer in his order *inter alia* found Mrs. Sadhana Nabera guilty of insider trading and had levied Rs.5 lakhs penalty on her. While allowing the said appeal, the Hon'ble SAT observed, "We are of the considerate opinion that Nabera as an auditor could not be expected, much less reasonably, to have access to the information of merger of Zap with the company which was a policy decision.

In view of the above, we are of the view that Nabera had no concern with the information pertaining to the merger of Zap with the company nor was it a part of his duty to have access to such information while performing his duties. No company would allow such sensitive information to reach the auditor till it has been made public.

***Kedar Nath Agarwal* v *Securities and Exchange Board of India*,** the allegation that the stock broker had failed to prescribe the code of internal procedures and conduct for the prevention of insider trading; the Enquiry Officer observed that no specific instance has been pointed out where the stock broker or any of its associated entities had traded as an "insider" after having access to any price sensitive information. Though, the Enquiry Officer had not viewed this as a serious issue, the tribunal was of the view that the same is not in accordance with the provisions of Regulation 12 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992. The stock broker, being an intermediary recognized as such under Section 12 of the SEBI Act, and is very much active in the securities market, needs to comply with the aforesaid provision.

Rakesh Agrawal* vs. *SEBI

In 1996, managing director of ABS Industries Ltd., signed a deal with Bayer AG, a German business, which agreed to purchase 51% of ABS Industries Ltd.'s shares. Following UPSI's announcement of the acquisition, the accused sold a significant portion of his ABS Industries ownership, which he owned through his brother-in-law. Considering the brother-in-law to be a well-connected individual, SEBI held that Managing Director was guilty of insider trading and directed him to deposit Rs. 34 lakhs with Investor Protection Funds of Stock Exchange, Mumbai and NSE (in equal proportion i.e. Rs.17 lakhs in each exchange) to pay any investor who may make a claim afterwards.

On appeal to the Securities Appellate Tribunal (SAT), it was concluded that even if Managing Director had traded securities while in possession of UPSI, he was not guilty of insider trading because his actions were in the best interests of the company (as Bayer AG was not willing to acquire the company unless it could obtain a minimum of 51% of the shares) and there was no intention to make a profit.

Further, SAT decided that in order to penalise an insider for violating the Regulations, it must be proven that the insider benefited unfairly from the trade. The tribunal also rejected SEBI's argument that insider trading jurisprudence is founded on the concept of 'disclose or abstain', and that an insider in possession of UPSI cannot trade in a company's stocks until he reveals the UPSI. After revisiting the entire jurisprudence of insider trading on requirement of Mens Rea under Indian legal system, the tribunal held that: *"Taking into consideration the very objective of the SEBI Regulations prohibiting the insider trading, the intention/motive of the insider has to be taken cognizance of. It is true that the regulation does not specifically bring in mens rea as an ingredient of insider trading. But that does not mean that the motive need be ignored."*

Hindustan Lever Limited* vs. *SEBI

Hindustan Lever Ltd. **("HLL")** bought 8 lakh shares of Brook Bond Lipton India Ltd. **("BBLIL")** from Public Investment Institution, Unit Trust of India **("UTI")** two weeks prior to the public announcement of the merger of two companies, i.e., HLL and BBLIL. SEBI, suspecting insider trading, issued a Show Cause Notice **("SCN")** to the Chairman, all Executive Directors, the Company Secretary and the then Chairman of HLL.

London-based Unilever was the parent company of HLL and BBLIL, and were operating under the same management. SEBI determined that HLL and its directors were insiders because they had prior knowledge of the merger. SEBI further determined that HLL was in the possession of UPSI as mentioned under Section 2(k) of the 1992 Regulations, which included any information regarding amalgamation/mergers/takeovers that "is not widely known or published by such company for general information, but which if published or known, is likely to substantially impact the price of securities of that company in the market".

Observations made by SAT

The issue before SAT was whether HLL was an insider and the information held by the HLL constituted UPSI. The SAT concurred with the SEBI order that the information accessible to HLL in regard to the merger went beyond self-generated information, i.e., information derived from the company's own decision-making. In addition, SAT stated that the presence of directors who were common to both HLL and BBLIL, as well as a common parent company in Unilever, indicated that they (i.e., HLL and BBLIL) were effectively managed together. As a result, HLL could be classified as an insider under the 1992 Regulations, and it was reasonable to assume that HLL was privy to the BBLIL board's decision-making on the merger issue.

SAT observed that even in the merger of two healthy companies, there are synergistic possibilities that might lead to price sensitivity for either company, on the subject of whether the information shared with HLL constituted UPSI. As a result, SAT concurred with SEBI's judgment that merger information was price sensitive (albeit not "unpublished").

The outcome of the decision

This decision of the SAT led to an amendment in the definition of *"unpublished"* under Section 2(k) which stated, *"unpublished" means information which is not published by the company or its agents and is not specific in nature."*

Explanation – Speculative reports in print or electronic media shall not be considered as published information".

By the same Amendment, SEBI also introduced a new provision, Section 2(ha) which defined *"price sensitive information"* to include any information relating to an amalgamation, merger or takeover as deemed price sensitive information, regardless of whether such information actually has any affect the price of the securities in the market. However, the amendments did not definitively and expressly define *"generally available information"* and then 2015 regulations finally came out defining what constitutes UPSI by stating *"generally available information"* under Section 2(1)(e) which stated, *"generally available information" means information that is accessible to the public on a non-discriminatory basis;".*

COMPOUNDING PROVISIONS UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 ("SEBI ACT"), SECURITIES CONTRACTS (REGULATION) ACT, 1956 (SCRA) & DEPOSITORIES ACT, 1996

Composition of certain offences

Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996 (collectively referred to as SEBI Laws here for brevity) contain penalty provisions for contravention. Section 24A of the Securities and Exchange Board of India Act, 1992, Section 23 N of the Securities Contracts (Regulation) Act, 1956 and section 22A of the Depositories Act, 1996 provide for composition of certain offences thereunder:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending. . Thus, if the offence is punishable with fine only or imprisonment or fine or with fine or imprisonment or both alone can be compounded.

The contours and the essential elements of Section 24A of the SEBI Act were recently explored and elaborately explained by the Hon'ble Supreme Court ("**Court**") in *Prakash Gupta v. Securities and Exchange Board of India ("**Prakash Gupta**").*

CASE STUDY

***Prakash Gupta* v. *Securities and Exchange Board of India*, dated July 23, 2021**

Fact of the Case: The appellant is being prosecuted for an offence under Section 24(1) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act"). The appellant sought the compounding of the offence under Section 24A. By an order dated 15 November 2018, the Additional Sessions Judge – 02 Central District at Tis Hazari Courts, Delhi ("Trial Judge"), rejected the application, upholding the objection of the Securities and Exchange Board of India that the offence could not be compounded without its consent.

Mr. Prakash Gupta, director of Ideal Hotels & Industries Limited ("Company"), was accused of having engaged in price rigging and insider trading during the Initial Public Offer ("IPO") of the Company, in violation of Regulations 4(a) and (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, along with other provisions of the Takeover Regulations, 1994 and 1997.

On 27 June 1996, SEBI received a complaint alleging that certain Delhi/Bombay based brokers had, on the instructions of the Company, purchased its shares and that huge deliveries were kept outstanding in the grey market. SEBI also received an anonymous complaint in October 1996, alleging price rigging and insider trading in the scrip of the Company.

During its investigation, SEBI obtained the details of the top brokers who traded in the shares of the Company during this period on the Delhi Stock Exchange and Bombay Stock Exchange, and also of their clients who had made significant purchases or sales on the scrip. Consequently, SEBI came up with the name of six entities who had purchased approximately 51 per cent of the 38 lac equity shares on offer during the period between 28 January 1996 and 29 February 1996. They were found to have continued buying shares even after that period, and had ultimately purchased 28,38,000 equity shares, which was approximately 75 per cent of the post issue floating stock of the Company. As such, it was assumed that these entities were, therefore, responsible for the upward price movement in the scrip.

A criminal complaint was filed against Mr. Gupta before the Trial Court alleging the above violations and an Adjudicating Officer under the SEBI Act was appointed. Prior to any orders in the aforesaid proceedings, the Chairman of SEBI, under the provisions of the SEBI Act, allowed Mr. Gupta to purchase the shares of the shareholders at a higher price than that fixed during the IPO, thereby supposedly resolving the issue. However, the AO, pursuant to noting the offences committed by Mr. Gupta, levied a fine of INR 20,000 on him and other co-promotors. This penalty too was paid by the accused.

Thereafter, a compounding application under Section 24A of the SEBI Act was filed by Mr. Gupta before the Trial Court which was objected to by the High Powered Advisory Committee ("HPAC") of SEBI. The Trial Court rejected the compounding application on the grounds that SEBI had not provided its consent to the same, which was upheld by the High Court of Delhi. Hence, the present appeal before the Court.

Issue:

Whether under section 24A of the SEBI Act, the express consent of SEBI is required prior to the compounding of offences by the Securities Appellate Tribunal or the court before which proceedings are pending ?

Observation:

While a plain reading of the section 24A does not provide for the consent of SEBI, it was considered whether such consent should be read into Section 24A, on the grounds of *casus ommisus*.

In the present case, it is evident that Section 24A does not stipulate that the consent of SEBI is necessary for the SAT or the Court before which such proceedings are pending to compound an offence. Where Parliament intended that a recommendation by SEBI is necessary, it has made specific provisions in that regard in the same statute. Section 24B provides a useful contrast. Section 24B(1) empowers the Union Government on the recommendation of SEBI, if it is satisfied that a person who has violated the Act or the Rules or Regulations has made a full and true disclosure in respect of the alleged violation, to grant an immunity from prosecution for an offence subject to such conditions as it may impose.

The second proviso clarifies that the recommendation of SEBI would not be binding upon the Union Government. In other words, Section 24B has provided for the exercise of powers by the Central Government to grant immunity from prosecution on the recommendation of SEBI. In contrast, Section 24A is conspicuously silent in regard to the consent of SEBI before the SAT or, as the case may be, the Court before which the proceeding is pending can exercise the power. Hence, it is clear that SEBI's consent cannot be mandatory before SAT or the Court before which the proceeding is pending, for exercising the power of compounding under Section 24A.

Decision:

In the present case, we are clearly of the view that the nature of the allegations against the appellant are such so as to preclude a decision to compound the offences.

1. The factors as listed in the Frequently Asked Questions in relation to the 'Guidelines for Consent Order and for considering requests for composition of offences' dated April 20, 2007 should be adhered to;
2. The opinion of SEBI and its HPAC must be given due deference as the same indicates their position on the effect that non-prosecution of the offence may have on market structures. The Securities Appellate Tribunal or the courts should only differ from the opinion of SEBI/ the HPAC, if it has reasons to believe that the said opinion is *mala fide* or manifestly arbitrary;
3. The principle behind the compounding proceeding should be that the aggrieved party has been restituted and that it has consented to end the dispute. Since the aggrieved party may not be before the court, and that the offences are usually of public nature, it becomes even more essential to rely on SEBI's opinion to understand if restitution has taken place; and
4. Even if restitution has taken place, but the offence is of public character and non-prosecution of the same would affect the public at large, such offence should not be compounded.

The judgment of the Supreme Court in *Prakash Gupta* is significant as it not only underlines the importance of the role played by SEBI in market regulation and addressal of investors, but also appreciates the intention of the legislators while doing so. Further, it fills in the lacune that earlier existed by providing detailed guidelines on the factors to be take into consideration while passing an order under Section 24A of the SEBI Act.

https://main.sci.gov.in/supremecourt/2019/17875/17875_2019_35_1501_28712_Judgement_23-Jul-2021.pdf

SETTLEMENT PROCEEDINGS / CONSENT ORDERS UNDER SEBI LAWS-APPLICABLE FOR COMPOSITION OF OFFENCE

In SEBI Laws, the term Settlement / Consent Order is significant and has to be understood along with or at the time of learning composition of offence.

Consent order may be passed at any stage after probable cause of violation has been found under SEBI Laws. However, in the event of a serious and intentional violation, the process should not be completed till the fact-finding process is completed whether by way of investigation or otherwise.

Compounding of Offence can take place after filing criminal complaint by SEBI. Where a criminal complaint has not yet been filed but is envisaged, the process for consent orders will be followed.

Consent orders provide flexibility of a wider array of enforcement actions which will achieve the twin goals of an appropriate sanction and deterrence without resorting to long drawn litigation before SEBI, SAT, and Courts. Passing of consent orders also reduce regulatory costs and save time and efforts in pursuing enforcement actions.

It is an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws. It may settle all issues or reserve an issue or claim, but it must precisely state what issues or claims are being reserved. A Consent Order may or may not include a determination that a violation has occurred.

Consent Order cannot be construed as waiver of statutory powers by the Board. The Board always has the right to proceed for appropriate action if it cannot achieve its objectives through a consent order.

This effort could more effectively be used for pursuing cases which require the full process of enforcement action and for policy initiatives.

Under the Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956 (SCRA) and the Depositories Act, 1996 (collectively also known as securities laws), SEBI pursues two streams of enforcement actions i.e., Administrative /Civil (or) Criminal.

Administrative/civil actions include issuing directions such as remedial orders, cease and desist orders, suspension or cancellation of certificate of registration and imposition of monetary penalty under the respective statutes and action pursued or defended in a court of law/tribunal. Criminal action involves initiating prosecution proceedings against violators by filing complaint before a criminal court.

In the case of the chairman *SEBI* v. *Shriram mutal fund & ANR* Appeal (Civil) No. 9523-9524 of 2003 it was held that A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15(D)(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow.

Settlement of administrative and civil proceedings. (Section 15JB of SEBI Act & Section 23 JA of Securities Contracts (Regulations) Act, 1956 and Section 19-IA of Depositories Act, 1996)

- Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I of SEBI Act, 1992 , section 12A or section 23-I of Securities Contracts (Regulations) Act, 1956 and section 19, and section 19H of Depositories Act, 1996, as the case may be, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

- The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under SEBI Act, 1992.
- The settlement proceedings under these sections, the procedure specified by the Board under the Securities and Exchange Board of India Act, 1992 shall apply.
- No appeal shall lie under section 15T of SEBI Act, 1992, section 23 L of Securities Contracts (Regulations) Act, 1956 and section 23A of Depositories Act, 1996 against any order passed by the Board or adjudicating officer, as the case may be, under this section.

All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India.

CASE LAWS

Shareholders of the *Kapashi Commercials Ltd.* on 10th July, 2020, a BSE Listed company, have settled with SEBI a case of alleged violation of takeover norms by paying over Rs 34 lakh amount towards settlement terms. They have filed an application with the SEBI proposing to settle the case for alleged violation of SAST (Substantial Acquisition of Shares and Takeovers) Regulations in respect of change in their shareholding in Kapashi Commercials. It was alleged that the four individuals made delayed disclosures to the company and BSE, about the change in their shareholding in Kapashi Commercials.

SECURITIES AND EXCHANGE BOARD OF INDIA (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018

In exercise of the powers conferred by Section 15JB of the Securities and Exchange Board of India Act, 1992, Section 23JA of the Securities Contracts (Regulation) Act, 1956 and Section 19-IA of the Depositories Act, 1996 read with Section 30 of the Securities and Exchange Board of India Act, 1992, Section 31 of the Securities Contracts (Regulation) Act, 1956 and Section 25 of the Depositories Act, 1996,SEBI has by notification dated 30th November 2018 has made the following regulations to provide for the terms of settlement and the procedure of settlement and matters connected therewith or incidental thereto known as Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018. It came into force on the 1st day of January 2019.

Application for Settlement (Regulation 3)

(1) A person against whom any specified proceedings have been initiated and are pending or may be initiated, may make an application to the Board in the Form specified in Part-A of the Schedule-I.

(2) The application made above shall be accompanied by a non-refundable application fee as specified in Part-B of Schedule I and the undertakings and waivers as specified in Part-C of Schedule-I.

Provided that the rejection or withdrawal of the application shall not affect the continued validity of the undertakings and waivers given in respect of limitation or laches in respect of the initiation or continuation or restoration of any legal proceeding and the waivers given under sub-paras (d), (e), (f) and (g) of para 12 of the undertaking and waivers as provided in Part-C of the Schedule-I and subject to such undertakings and waivers, the Board or the applicant, shall be free to initiate or pursue such proceedings as may be appropriate in accordance with law.

(3) The applicant shall make full and true disclosures in the application in respect of the alleged default(s):

Provided that the facts established against the applicant or admitted in any ongoing or concluded proceedings in India or outside India, with respect to the same cause of action, under any law, shall be deemed to be admitted by the applicant in respect of the proceedings proposed to be settled.

(4) The applicant shall make one application for settlement of all the proceedings that have been initiated or may be initiated in respect of the same cause of action.

(5) An application that is not complete in all respects or does not conform to the requirements of these regulations shall be returned to the applicant.

(6) The applicant whose application has been returned under sub- regulation (5) may, within fifteen days from the date of communication from the Board, submit the complete and revised application that conforms to the requirements of these regulations:

Provided that no further opportunity shall be given to the applicant to make an application in respect of the alleged default at the same stage of the proceedings, as indicated in Table I in Schedule-II.

(7) Where the applicant is an association or a firm or a body corporate or a limited liability partnership, the application and undertakings and waivers shall be executed by the person in charge of, and responsible for the conduct of the business of such firm or association or body corporate and the same shall bind the firm or association, the body corporate and any officer who is in default.

Explanation. - For the purpose of this sub-regulation, the expression 'officer who is in default' shall have the same meaning as provided in sub-Section (60) of Section 2 of the Companies Act, 2013.

(8) An application for settlement of defaults related to disclosures, shall to the extent possible, be made after making the required disclosure.

Limitation (Regulation 4)

An application in respect of any specified proceeding pending before the Board shall not be considered if it is made after sixty days from the date of service of the notice to show cause or supplementary notice(s) to show cause, whichever is later.

The provisions of this regulation shall not apply in the case of proceedings pending before the Tribunal or any court.

Scope of settlement proceedings (Regulation 5)

(1) No application for settlement of any specified proceedings shall be considered, if:

  (a) an earlier application with regard to the same alleged default had been rejected;

  (b) the audit or investigation or inspection or inquiry, if any, in respect of any cause of action, is not complete, except in case of applications involving confidentiality; or

  (c) monies due under an order issued under securities laws are liable for recovery under securities laws.

(2) The Board may not settle any specified proceeding, if it is of the opinion that the alleged default, -

  i. has market wide impact, or

  ii. caused losses to a large number of investors, or

  iii. affected the integrity of the market.

(3) Without prejudice to the generality of the foregoing provisions, for settling any specified proceeding the Board may inter alia take into account the following factors, -

  (a) whether the applicant has refunded or disgorged the monies due, to the satisfaction of the Board;

  (b) whether the applicant has provided an exit or purchase option to investors in compliance with securities laws, to the satisfaction of the Board;

  (c) whether the applicant is in compliance with securities laws or any order or direction passed under securities laws, to the satisfaction of the Board;

  (d) any other factor as may be deemed appropriate by the Board.

(4) Without prejudice to sub-regulations (1) and (3), the Board may not settle the specified proceedings where the applicant is a wilful defaulter, a fugitive economic offender or has defaulted in payment of any fees due or penalty imposed under securities laws.

(5) Nothing contained in these regulations shall be construed to restrict the right of the Panel of Whole Time Members to consider or reject any application in respect of any specified proceeding without examination by the Internal Committee or the High Powered Advisory Committee.

Rejection of application (Regulation 6)

(1) An application may also at any time be rejected on the following grounds:

  (a) Where the applicant refuses to receive or respond to the communications sent by the Board;

  (b) Where the applicant does not submit or delays the submission of information, document, Revised Settlement Terms, etc., as called for by the Board;

  (c) Where the applicant who is required to appear, does not appear before the Internal Committee on more than one occasion;

  (d) Where the applicant violates in any manner the undertaking and waivers as provided in Part-C of the Schedule-I;

  (e) Where the applicant does not remit the settlement amount within the period specified in clause (a) of sub-regulation (2) of regulation 15 and/or does not abide by the undertaking and waivers;

  (f) Where the applicant fails to comply with the condition precedent(s) for settlement within the time as required by the Internal Committee.

(2) The rejection under sub-regulation (1) shall be communicated to the applicant:

Provided that the applicant shall continue to be bound by the waivers given in respect of limitation or laches in respect of the initiation or continuation or restoration of any legal proceeding and the waivers given under sub-paras (d), (e), (f) and (g) of para 12 of the undertaking and waivers as provided in Part-C of the Schedule-I.

Withdrawal of application (Regulation 7)

(1) An application may be withdrawn at any time prior to the communication of the decision of the Panel of Whole Time Members under regulation 15.

(2) An applicant who withdraws an application under sub-regulation (1) shall not be permitted to make another application in respect of the same default:

Provided that, as may be recommended by the High Powered Advisory Committee, such an application may be considered subject to an increase of atleast fifty percent over the settlement amount determined in accordance with Schedule-II of these Regulations.

Effect of pending application on specified proceedings (Regulation 8)

(1) The filing of an application for settlement of any specified proceedings shall not affect the continuance of the proceedings save that the passing of the final order shall be kept in abeyance till the application is disposed of.

(2) Where the application is filed in case of proceedings that may be initiated against the applicant, such proceedings shall not be initiated till the application is rejected or withdrawn:

Provided that, the filing of an application shall not prohibit the initiation of any proceedings, in so far as may be deemed necessary for the purpose of issuance of interim civil and administrative directions to protect the interests of investors and to maintain the integrity of the securities markets.

Explanation. - Where any proceeding is pending or to be initiated against several persons but the settlement application is filed only by one or more persons, but not all, the filing of such an application shall not affect the initiation, continuation and disposal of the proceedings against the person who has not filed the application for settlement and any adverse observations made in such proceedings against the applicant shall qua the applicant be subject to the outcome of the settlement application filed by such applicant.

Settlement terms (Regulation 9)

(1) The settlement terms may include a settlement amount and/or non-monetary terms, in accordance with the guidelines specified in Schedule-II.

(2) The non-monetary terms may include the following:

(a) Suspension or cessation of business activities for a specified period;

(b) Exit from Management;

(c) Disgorgement on account of the action or inaction of the applicant;

(d) Refraining from acting as a partner or officer or director of an intermediary or as an officer or director of a company that has a class of securities regulated by the Board, for specified periods;

(e) Cancel securities and reduce holdings where the securities are issued fraudulently, including bonus shares received on such securities, if any, and reimburse any dividends received, etc.;

(f) Lock-in of securities;

(g) Implementation of enhanced policies and procedures to prevent future securities laws violations as well as agreeing to appoint or engage an independent consultant to review internal policies, processes and procedures;

(h) Provide enhanced training and education to employees of intermediaries and securities market infrastructure institutions;

(i) Submit to enhanced internal audit and reporting requirements;

(j) Restraining from accessing the securities market and/or prohibiting from buying, selling or otherwise dealing in securities, directly or indirectly and associating with the securities market in any manner for a specific period.

(3) The settlement amount, excluding the legal costs and disgorged amount, shall be credited to the Consolidated Fund of India.

(4) The application fee referred to in sub-regulation (2) of regulation 3 and the legal costs, if any, forming

part of the settlement amount shall be credited to the Securities and Exchange Board of India General Fund.

Explanation. – Legal costs shall include liquidated costs, as may be determined by the Board, in respect of costs for obtaining appropriate orders from the Tribunal or Court under sub-regulation (2) of regulation 24 and include other expenses incurred by the Board in any other proceeding before any Court or Tribunal in respect of such application.

(5) The amount of profits made or losses avoided by the applicant that may be disgorged as part of the settlement terms, shall be credited to the Investor Protection and Education Fund.

Factors to be considered to arrive at the settlement terms (Regulation 10)

While arriving at the settlement terms, the factors indicated in Schedule-II may be considered, including but not limited, to the following:

(a) conduct of the applicant during the specified proceeding, investigation, inspection or audit;

(b) the role played by the applicant in case the alleged default is committed by a group of persons;

(c) nature, gravity and impact of alleged defaults;

(d) whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded;

(e) the extent of harm and/or loss to the investors' and/or gains made by the applicant;

(f) processes that have been introduced since the alleged default to minimize future defaults or lapses;

(g) compliance schedule proposed by the applicant;

(h) economic benefits accruing to any person from the non-compliance or delayed compliance;

(i) conditions which are necessary to deter future non-compliance by the same or another person;

(j) satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them;

(k) any other enforcement action that has been taken against the applicant for the same violation;

(l) any other factors necessary in the facts and circumstances of the case.

High Powered Advisory Committee (Regulation 11)

(1) The Board shall constitute a High Powered Advisory Committee for consideration and recommendation of the terms of settlement.

(2) The High Powered Advisory Committee shall consist of a Judicial member who has been the Judge of the Supreme Court or a High Court and three external experts having expertise in securities market or in matters connected therewith or incidental thereto.

(3) The term of the members of the High Powered Advisory Committee shall be three years which may be extended for a further period of two years.

(4) The quorum for a meeting of the High Powered Advisory Committee shall be of three members.

Explanation. - Meeting includes meeting through audio-video electronic means or through the medium of electronic video linkage.

(5) The High Powered Advisory Committee shall conduct its meetings in the manner specified by the Board in this regard: Provided that:

(i) where any member of the High Powered Advisory Committee seeks recusal, the remaining two or more members may submit their recommendation on the terms of settlement;

(ii) where no consensus or majority may be reached, the recommendation made by the Judicial member shall be considered to be the recommendation of the High Powered Advisory Committee and in case of recusal of the Judicial member, the recommendations of the remaining two or more members shall be submitted for consideration to the Panel of Whole Time Members; and

(iii) where all or all but one of the members of the High Powered Advisory Committee recuse themselves in respect of an application, the Board may constitute another High Powered Advisory Committee.

Internal committee(s) (Regulation 12)

(1) Internal Committee(s) shall be constituted by the Board.

(2) The Internal Committee(s) shall comprise of an officer of the Board not below the rank of Chief General Manager and such other officers as may be specified by the Board.

PROCEDURE OF SETTLEMENT

Proceedings before the Internal Committee (Regulation 13)

(1) Save as otherwise provided in these regulations, an application shall be referred to an Internal Committee to examine whether the proceedings may be settled and if so to determine the settlement terms in accordance with these regulations.

(2) The Internal Committee may:

(a) call for relevant information, documents, etc., pertaining to the alleged default(s) in possession of the applicant or obtainable by the applicant;

Explanation. – Nothing in these regulations shall confer a right upon the applicant to seek information from the Board or require the Board to seek information from any other person for the purpose of relying upon it in the settlement proceedings or request the Board to permit it to present information not already disclosed in the application, which the applicant was aware of at the time of making the application or which information upon diligent enquiry being made could have become known to the applicant.

(b) call for the personal appearance of the applicant before it:

Provided that a duly authorized representative of the applicant may represent on behalf of the applicant:

Explanation. - Personal appearance under this clause includes appearance through audio-video electronic means or through the medium of electronic video linkage as may be permitted by the Internal Committee.

(ba) require the applicant to comply with certain condition precedent(s) within a specified time period for consideration of the application for settlement.

(c) permit the applicant to submit revised settlement terms within a period not exceeding fifteen working days from the date of the Internal Committee meeting.

(3) The proposed settlement terms, if any, shall be placed before the High Powered Advisory Committee.

Proceedings before the High Powered Advisory Committee (Regulation 14)

(1) The High Powered Advisory Committee shall consider the proposed settlement terms placed before it along with the following:

(a) the application, undertaking and waivers of the applicant;

(b) factors specified in regulation 10;

(c) settlement terms or revised settlement terms proposed by the applicant;

(d) any other relevant material available on record.

(2) The High Powered Advisory Committee may seek revision of the settlement terms and refer the application back to the Internal Committee.

(3) The recommendations of the High Powered Advisory Committee shall be placed before the Panel of Whole Time Members.

Action on the recommendation of High Powered Advisory Committee (Regulation 15)

(1) The Panel of Whole Time Members shall consider the recommendations of the High Powered Advisory Committee and may accept or reject the same:

Provided that where the recommendations of the High Powered Advisory Committee to settle the specified proceedings are rejected, the panel of Whole Time Members shall record reasons for rejection of the recommendations:

Provided further that where the recommendation of the High Powered Advisory Committee to settle the specified proceedings are rejected, such decision of the panel of Whole Time Members shall be communicated to the applicant.

(2) Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -

(a) remit the settlement amount forming part of the settlement terms, not later than thirty calendar days from the date of receipt of the notice of demand:

Explanation. – Remittance of settlement amount shall be done by way of payment through the dedicated payment gateway provided for the purpose.

Provided that, in no case shall such remittance be accepted after the thirtieth calendar day from the date of the receipt of the notice of demand.

(b) fulfil/undertake in writing to abide by, the other settlement terms, if any, within the time provided to the applicant.

(2) Where the Panel of Whole Time Members does not accept the recommendation of the High Powered Advisory Committee to settle the specified proceedings on the settlement terms recommended by it, the panel may return the application for re-examination of the settlement terms and thereafter the procedure as applicable in the case of an original application shall be followed by the Internal Committee and the High Powered Advisory Committee.

1) **What is a Consent Order?**

Consent Order means an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws. It may settle all issues or reserve an issue or claim, but it must precisely state what issues or claims are being reserved. A Consent Order may or may not include a determination that a violation has occurred.

2) **What is Compounding of Offence?**

A Compounding is a process whereby an accused pays compounding charges in lieu of undergoing consequences of prosecution.

3) **What are Administrative/Civil enforcement actions?**

Administrative/Civil enforcement actions include issuing directions, suspension or cancellation of certificate of registration, imposition of monetary penalty, pursuing suits and appeals in Courts and Securities Appellate Tribunal (SAT).

4) **What is Prosecution?**

Filing of criminal complaints before various criminal courts by SEBI for violation of provisions of securities laws which may lead to imprisonment and/ or fine.

5) **What is the objective of Consent Order?**

Consent Order provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of an appropriate sanction, remedy and deterrance without resorting to litigation, lengthy proceedings and consequent delays.

6) **What is the objective of Compounding of Offence?**

Compounding of offence allows the accused to avoid a lengthy process of criminal prosecution, which would save cost, time, mental agony, etc in return for payment of compounding charges.

7) **Who can seek settlement of proceedings through consent order and compounding?**

Any person who is notified that a proceeding may or will be initiated/instituted against him/her, or any party to a proceeding already initiated/instituted, may, at any time, propose in writing for settlement.

SUMMARY SETTLEMENT PROCEDURE

Summary settlement procedure (Regulation 16)

(1) Notwithstanding anything contained in Chapter VI, before initiating any specified proceeding, the Board may issue a notice of summary settlement in the format as specified in Part-A of Schedule-III, calling upon the noticee to file a settlement application under Chapter-II and submit the settlement amount and/or furnish an undertaking in respect of other nonmonetary terms or comply with other non-monetary terms, as may be specified in the summary settlement notice in respect of the specified proceeding(s) to be initiated for the following defaults,-

  i. Delayed disclosures, including filing of returns, report, document, etc.;

  ii. Non-disclosure in relation to companies exclusively listed on regional stock exchanges which have exited;

  iii. Disclosures not made in the specified formats;

iv. Delayed compliance of any of the requirements of law or directions issued by the Board;

v. Such other defaults as may be determined by the Board.

Provided that, the specified proceeding(s) shall not be settled under this Chapter, if in the opinion of the Board, the applicant has failed to make a full and true disclosure of facts or failed to co-operate in the required manner.

(2) Notwithstanding anything contained in the notice of settlement, the Board shall have the power to modify the enforcement action to be brought against the noticee and the notice of settlement shall not confer any right upon the noticee to seek settlement or avoid any enforcement action.

(3) The noticee may, within thirty calendar days from the date of receipt of the notice of settlement, -

(a) file a settlement application in the Form specified in Part-A of Schedule-I along with non-refundable application fee as specified in Part-B and the undertakings and waivers as specified in Part-C of Schedule-I;

(b) remit the settlement amount as specified in the notice of settlement;

(c) comply or undertake to comply with other non-monetary terms as specified in the notice of settlement, as the case may be; and

(d) seek rectification of the calculation of the settlement amount, as communicated in the notice of settlement, at the time of filing the settlement application and in all such cases, the decision of the Board shall be final and remittance shall be done within thirty calendar days from the date of receipt of the decision of the Board:

Provided that, the Board may for reasons to be recorded, grant extension of time not exceeding a further period of fifteen calendar days for filing the settlement application, remittance of the settlement amount and/or furnishing an undertaking in respect of any of the non-monetary terms or compliance with any of the non-monetary terms specified in the notice of settlement.

(4) Upon being satisfied with the remittance of settlement amount and undertaking furnished in respect of the non-monetary terms or compliance with non-monetary terms, if any as detailed in the settlement notice, the Board shall pass an order of settlement under regulation 23.

Regulation 17

Notwithstanding anything contained in these regulations, where a noticee does not file a settlement application under this Chapter or remit the settlement amount and/or comply with other non-monetary terms to the satisfaction of the Board or withdraws the settlement application at any time prior to the communication of the decision of the Board, the specified proceedings may be initiated, and such a noticee shall only be permitted to file a settlement application in respect of the proceedings pending before the Court or Tribunal, after conclusion of proceedings before the Adjudicating Officer or the Board, as the case may be.

Settlement with confidentiality (Regulation 19)

(1) An applicant seeking the benefit of confidentiality in return for admitting for the limited purpose of settlement of specified proceedings to be initiated and agreeing to provide substantial assistance in the investigation, inspection, inquiry or audit, to be initiated or ongoing, against any other person in respect of a violation of securities laws, shall fulfil the conditions of this Chapter, including –

(a) cease to participate in the violation of securities laws from the time of the disclosure of information, unless otherwise directed by the Board;

(b) provide and continue to provide complete and true disclosure of information, documents and evidence, which is in his possession or he is able to obtain, to the satisfaction of the Board in respect of the alleged contravention of the provisions of securities laws;

(c) co-operate fully, continuously and expeditiously throughout the investigation, inspection, inquiry or audit and related proceedings before the Board; and

(d) not conceal, destroy, manipulate or remove the relevant documents in any manner that may contribute to the establishment of the alleged violation.

Explanation. – Violation of securities laws in this Chapter refers to defaults other than those of disclosure and reporting requirements detailed in Schedule II.

Provided that an application made under this chapter shall be made only in cases prior to or pending investigation, inspection, inquiry or audit.

(2) Notwithstanding anything contained in this Chapter, where an applicant fails to comply with the conditions mentioned in this regulation, the Board may rely upon the information and evidence submitted by the applicant in any proceedings.

(3) Without prejudice to sub-regulations (1) and (2), the Board may subject the applicant to further restrictions or conditions, as deemed fit, after considering the facts and circumstances of the case.

(4) For the purpose of seeking confidentiality, the applicant or its authorized representative may make an application containing all the relevant disclosures pertaining to the information as specified in Schedule-IV for furnishing the information and evidence relating to the commission of any violation of securities laws.

(5) Upon being satisfied the Board may assure the benefit of confidentiality and shall thereupon mark the status of the application depending upon its priority and convey the same to the applicant in writing.

(6) The Board may, for reasons to be recorded in writing, at any stage, reject the application if the information, documents or evidence is found to be incomplete or false to the knowledge of the applicant.

(7) The rejection of the application for confidentiality shall be communicated to the applicant.

Procedure (Regulation 20)

(1) The provisions of Chapters IV to VI of these regulations may be applied *mutatis mutandis* to a settlement application filed under this Chapter and a settlement order passed accordingly.

(2) The information, documents and evidence provided by the applicant under this chapter shall be submitted in the manner specified by the Board.

Confidentiality and assurance (Regulation 21)

For the purposes of providing the applicant with interim confidentiality and assurance from being proceeded with, the Board may not initiate regulatory measures when the Board has a reasonable belief that the information provided to it relates to a possible securities law violation that has occurred, is ongoing or about to occur.

Confidentiality (Regulation 22)

Notwithstanding anything contained in Chapter X, the following shall be treated as confidential, -

(a) the identity of the applicant seeking confidentiality; and

(b) the information, documents and evidence furnished by the applicant under this Chapter.

Provided that, the identity of the applicant or such information or documents or evidence may not be treated as confidential if, –

(i) the disclosure is required by law;

(ii) the applicant has agreed to such disclosure in writing; or

(iii) there has been a public disclosure by the applicant.

SETTLEMENT ORDERS

Settlement of proceedings before the Adjudicating Officer and the Board (Regulation 23)

(1) The Whole Time Member, Adjudicating Officer or the competent officer of the Board before whom the proceedings are pending, shall dispose of the respective proceedings, by an appropriate order, on the basis of the approved settlement terms.

(2A) In case of specified proceedings which may be initiated or are proposed to be initiated, the Panel of Whole Time Members shall dispose of such proceedings on the basis of the approved settlement terms.

(3) The settlement order passed under these regulations shall, contain the details of the alleged default(s), relevant provisions of the securities laws, brief facts and circumstances relevant to the alleged default, the admissions made by the applicant, if any and the settlement terms.

Settlement of the proceedings pending before the Tribunal or any court (Regulation 24)

(1) Save as otherwise provided in these regulations, the provisions with regard to settlement of specified proceedings shall *mutatis mutandis* apply to an application for settlement of any proceeding pending before the Tribunal or any court.

(2) The proposal of settlement along with the settlement terms or rejection thereof shall be placed before such Tribunal or court for appropriate orders.

Service and publication of settlement order (Regulation 25)

Settlement orders shall be served on the applicant and shall also be published on the website of the Board:

Provided that settlement orders in matters relating to the confidentiality shall not, directly or indirectly, disclose the identity of the applicant, but shall indicate the provisions of securities laws which the applicant is alleged to have violated.

Settlement Schemes (Regulation 26)

Notwithstanding anything contained in these regulations, the Board may specify a settlement scheme for any class of persons involved in respect of any similar specified defaults.

Explanation. - A settlement order issued under a Settlement scheme shall be deemed to be a settlement order under these regulations.

Effect of settlement order on third party rights or other proceedings (Regulation 27)

(1) A settlement order under these regulations shall not be admissible as evidence in any other proceeding relating to an alleged default not covered under the settlement order nor affect the right of third parties arising out of the alleged default.

(2) Where any applicant who obtains a settlement order is also noticee along with any other person in any civil and administrative proceeding, the Adjudicating Officer or the Board while disposing proceedings

against such other person may make necessary observations in respect of the applicant in so far as is necessary to prove the act of another: Provided that, unless the settlement order is revoked, such observations shall qua the applicant be subject to the settlement order obtained by the applicant.

(3) Where any person has obtained a settlement order, which contains observations in respect of any other person for the commission of an alleged default, such an order shall not in itself be admissible as evidence against such other person.

Revocation of the settlement order (Regulation 28)

(1) If the applicant fails to comply with the settlement order or at any time after the settlement order is passed, it comes to the notice of the Board that the applicant has not made full and true disclosure or has violated the undertakings or waivers, settlement order shall stand revoked and withdrawn and the Board shall restore or initiate the proceedings, with respect to which the settlement order was passed.

(2) Whenever any settlement order is revoked, no amount paid under these regulations shall be refunded.

Confidentiality of information (Regulation 29)

(1) All information submitted and discussions held in pursuance of the settlement proceedings under these regulations shall be deemed to have been received or made in a fiduciary capacity and the same may not be released to the public, if the same prejudices the Board and/or the applicant.

(2) Where an application is rejected or withdrawn, the applicant and the Board shall not rely upon or introduce as evidence before any court or Tribunal, any proposals made or information submitted or representation made by the applicant under these regulations:

Provided that this sub-regulation shall not apply where the settlement order is revoked or withdrawn under these regulations.

Explanation. – When any fact is discovered in consequence of information received from a person in pursuance of an application, so much of such information, whether it amounts to an admission or not, as relates distinctly to the fact thereby discovered, may be proved.

Irregularity in procedure (Regulation 31)

No settlement order or rejection of a settlement application shall be invalidated on ground of any defect in procedure or determination of the settlement terms or on account of any vacancy in or any defect in the constitution of any committee under Chapter V:

Provided that, nothing in these regulations shall prohibit the Board from revoking the settlement order where the applicant fails to pay any difference due to any discrepancy in arriving at the settlement terms:

Provided further that, the applicant shall continue to be bound by the waivers given in respect of limitation or laches in respect of initiating or continuing or restoring of any legal proceeding and the waivers given in sub-paras (d), (e) (f) and (g) of para 12 of the undertaking and waivers as provided in Part-C of the Schedule-I.

Explanation. – For the removal of doubts, it is clarified that the power to seek the difference under this regulation shall include and always be deemed to have included the profits gained or losses avoided out of the violations for which the specified proceedings also have been initiated.

Procedure for composition (Regulation 33)

The provisions of Chapters IV to VI and Schedule-II may be applied *mutatis mutandis* for determining the terms while processing a compounding application.

CASE LAWS

In the matter of R. Jhunjhunwala and Ors.

The Securities and Exchange Board of India (SEBI) has moved to settle an 'insider trading' case involving investors who were accused of unusual dealing in shares of Aptech Computers.

One of the investor has management control over Aptech and is also on the board of the company. In September 2016, the share price of Aptech hit a 10 per cent upper circuit as Investor's brother and sister picked up 2.5 lakh and 5 lakh shares respectively. Both these trades combined were worth more than ₹100 crore then. There were trades executed by others as well. In just a few days, Aptech announced its entry into the pre-school education segment.

Shareholding of promoters led by the one of investor's family has increased to around 48 per cent in Aptech since the prominent investor first picked up a 10 per cent stake in the company in 2005. SEBI found that there existed unpublished price sensitive information in Aptech when the high-profile investors were dealing in the company shares.

SEBI had alleged that One of the investors and others traded in Aptech when in possession of unpublished price sensitive information (UPSI). In September 2016, Aptech had announced its foray into the preschool segment. As per the SEBI order, this was an UPSI between March 14, 2016 and September 7, 2016, the date of official announcement.

It is alleged that two persons/investors were in possession of the UPSI and communicated the same to other applicants. On the basis of the UPSI, investors are alleged to have traded in the scrip of Aptech during the UPSI period.

The investors settled the case under SEBI's consent route where an alleged wrongdoer can close investigations and adjudications into the matter with SEBI without admitting or denying guilt and charges against them. The total charges paid by one of the investor amount to ₹18.5 crore, of which the disgorgement amount is nearly ₹6 crore. His wife has paid ₹3.2 crore. Aptech board members, including investor and director have paid ₹6.2 crore and ₹1.7 crore respectively.

https://www.thehindubusinessline.com/markets/stock-markets/sebi-settles-insider-trading-case-with-rakesh-jhunjhunwala/article35329574.ece

SECURITIES APPELLATE TRIBUNAL

Establishment of Securities Appellate Tribunals (Section 15K)

Securities Appellate Tribunal (SAT) is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India Act, 1992 to hear and dispose of appeals against orders passed by the Securities and Exchange Board of India or by an adjudicating officer under the Act; and to exercise jurisdiction, powers and authority conferred on the Tribunal by or under SEBI Act, 1992 or any other law for the time being in force.

Consequent to Government Notification No.DL-33004/99 dated 27th May, 2014, SAT also hears and disposes of appeals against orders passed by the Pension Fund Regulatory and Development Authority (PFRDA) under the PFRDA Act, 2013. Further, in terms of Government Notification No.DL-(N)/04/0007/2003-15 dated 23rd March, 2015, SAT hears and disposes of appeals against orders passed by the Insurance Regulatory Development Authority of India (IRDAI) under the Insurance Act, 1938, the General Insurance Business (Nationalization) Act, 1972 and the Insurance Regulatory and Development Authority Act, 1999 and the Rules and Regulations framed thereunder.

Composition of Securities Appellate Tribunal (Section 15L)

The Securities Appellate Tribunal shall consist of a Presiding Officer and such number of Judicial Members and Technical Members as the Central Government may determine, by notification, to exercise the powers and discharge the functions conferred on the Securities Appellate Tribunal under this Act or any other law for the time being in force.

Subject to the provisions of this Act, –

(a) the jurisdiction of the Securities Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Presiding Officer of the Securities Appellate Tribunal with two or more Judicial or Technical Members as he may deem fit.

Every Bench constituted shall include at least one Judicial Member and one Technical Member;

(c) the Benches of the Securities Appellate Tribunal shall ordinarily sit at Mumbai and may also sit at such other places as the Central Government may, in consultation with the Presiding Officer, notify.

The Presiding Officer may transfer a Judicial Member or a Technical Member of the Securities Appellate Tribunal from one Bench to another Bench.

Qualification for appointment as Presiding Officer or Member of Securities Appellate Tribunal. (Section 15 M)

A person shall not be qualified for appointment as the Presiding Officer or a Judicial Member or a Technical Member of the Securities Appellate Tribunal, unless he –

(a) is, or has been, a Judge of the Supreme Court or a Chief Justice of a High Court or a Judge of High Court for at least seven years, in the case of the Presiding Officer; and

(b) is, or has been, a Judge of High Court for at least five years, in the case of a Judicial Member; or

(c) in the case of a Technical Member:

    (i) is, or has been, a Secretary or an Additional Secretary in the Ministry or Department of the Central Government or any equivalent post in the Central Government or a State Government; or

    (ii) is a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than fifteen years, in financial sector including securities market or pension funds or commodity derivatives or insurance.

The Presiding Officer and Judicial Members of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee. (Section 15MA)

The Technical Members of the Securities Appellate Tribunal shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee consisting of the following, namely:––

(a) Presiding Officer, Securities Appellate Tribunal – Chairperson;

(b) Secretary, Department of Economic Affairs – Member;

(c) Secretary, Department of Financial Services – Member; and

(d) Secretary, Legislative Department or Secretary, Department of Legal Affairs – Member.

The Secretary, Department of Economic Affairs shall be the Convener of the Search-cum-Selection Committee.

The Search-cum-Selection Committee shall determine its procedure for recommending the names of persons to be appointed as mentioned above. (Section 15MB)

No appointment of the Presiding Officer, a Judicial Member or a Technical Member of the Securities Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Search cum-Selection Committee.

A member or part time member of the Board or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, or any person at senior management level equivalent to the Executive Director in the Board or in such Authorities, shall not be appointed as Presiding Officer or Member of the Securities Appellate Tribunal, during his service or tenure as such with the Board or with such Authorities, as the case may be, or within two years from the date on which he ceases to hold office as such in the Board or in such Authorities.

The Presiding Officer or such other member of the Securities Appellate Tribunal, holding office on the date of commencement of Part VIII of Chapter VI of the Finance Act, 2017 shall continue to hold office for such term as he was appointed and the other provisions of this Act shall apply to such Presiding Officer or such other member, as if Part VIII of Chapter VI of the Finance Act, 2017 had not been enacted. (Section 15MC).

Tenure of office of Presiding Officer and other Members of Securities Appellate Tribunal (Section 15N)

The Presiding Officer or every Judicial or Technical Member of the Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, and shall be eligible for reappointment for another term of maximum five years.

Provided that no Presiding Officer or the Judicial or Technical Member shall hold office after he has attained the age of seventy years.

Procedure and powers of the Securities Appellate Tribunal.(Section 15U of SEBI Act, Section 22 B of Securities Contract(Regulation) Act, 1956 and Section 23B of Depositories Act, 1996)

(1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Securities Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely : –

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it *ex parte* ;
- (g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte* ;
- (h) any other matter which may be prescribed.

(3) Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) Where Benches are constituted, the Presiding Officer of the Securities Appellate Tribunal may, from time to time make provisions as to the distribution of the business of the Securities Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with, by each Bench.

(5) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Presiding Officer of the Securities Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

(6) If a Bench of the Securities Appellate Tribunal consisting of two members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Presiding Officer of the Securities Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing only on such point or points by one or more of the other members of the Securities Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Securities Appellate Tribunal who have heard the case, including those who first heard it.

Appeal to the Securities Appellate Tribunal (Section 15T of SEBI Act, Section 23 L of Securities Contract (Regulation) Act, 1956 and Section 23A of Depositories Act, 1996)

(1) (i) Any person under SEBI Act, 1992 aggrieved, –

  (a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

  (b) by an order made by an adjudicating officer under this Act; or

  (c) by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority.

(ii) Any person under Securities Contract (Regulation) Act, 1956 aggrieved, –

  (a) by the order or decision of the recognized stock exchange; or

  (b) the adjudicating officer; or

  (c) any order made by the Securities and Exchange Board of India under sub-section (3) of section 23-I.

(iii) any person aggrieved under Depositories Act, 1996

  (a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the regulations made thereunder,

  (b) or by an order made by an adjudicating officer under this Act.

may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed.

Further the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, the parties to the appeal and to the concerned Adjudicating Officer.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Right to legal representation. (Section 15V of SEBI Act, Section 22C of Securities Contract(Regulation) Act, 1956 and Section 23C of Depositories Act, 1996)

The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Explanation. – For the purposes of this section, –

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, vakil or any attorney of any High Court, and includes a pleader in practice.

Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings (Section 15R of SEBI Act, 1992)

No order of the Central Government appointing any person as the Presiding Officer or a Member of a Securities Appellate Tribunal shall be called in question in any manner, and no act or proceeding before a Securities Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Securities Appellate Tribunal.

Procedures as per Securities Appellate Tribunal (Procedure) Rules, 2000

In exercise of the powers conferred by section 29 read with sections 15T and 15U of the Securities and Exchange Board of India Act, 1992, the Central Government hereby made the Securities Appellate Tribunal (Procedure) Rules, 2000.

Form and procedure of appeal (Rule 4)

(1) A memorandum of appeal shall be presented in the Form by any aggrieved person in the registry of the Appellate Tribunal within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar.

(2) A memorandum of appeal sent by post shall be deemed to have been presented in the registry on the day it was received in the registry.

Sittings of Appellate Tribunal (Rule 5)

(1) The Appellate Tribunal shall hold its sitting either at a place where its office is situated or at such other place falling within its jurisdiction, as it may deem fit by the Appellate Tribunal.

(2) In the temporary absence of the Presiding Officer, Government may authorise one of the two other Members to preside over the sitting of the Tribunal either at a place where its office is situated or at such other place falling within its jurisdiction as it may deem fit by the Appellate Tribunal.

Language of Appellate Tribunal (Rule 6)

(1) The proceedings of the Appellate Tribunal shall be conducted in English or Hindi.

(2) No appeal, application, representation, document or other matters contained in any language other than English or Hindi, shall be accepted by Appellate Tribunal, unless the same is accompanied by a true copy of translation thereof in English or Hindi.

Appeal to be in writing (Rule 7)

(1) Every appeal, application, reply, representation or any document filed before the Appellate Tribunal shall be typewritten, cyclostyled or printed neatly and legibly on one side of the good quality paper of foolscap size in double space and separate sheets shall be stitched together and every page shall be consecutively numbered and filed in the manner provided in sub-rule (2).

(2) The appeal under sub-rule (1) shall be presented in five sets in a paper book along with an empty file size envelope bearing the full address of the respondent and in case the respondents are more than one, then sufficient number of extra paper books together with empty file size envelope bearing full addresses of each respondent shall be furnished by the appellant.

Presentation and scrutiny of memorandum of appeal (Rule 8)

(1) The Registrar shall endorse on every appeal the date on which it is presented or deemed to have been presented and shall sign endorsement.

(2) If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number.

(3) If an appeal on scrutiny is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant to rectify the same in his presence and if the said defect is not formal in nature, the Registrar may allow the appellant such time to rectify the defect as he may deem fit. If the appeal has been sent by post and found to be defective, the Registrar may communicate the defects to the appellant and allow the appellant such time to rectify the defect as he may deem fit.

(4) If the appellant fails to rectify the defect within the time allowed, the Registrar may by order and for reasons to be recorded in writing, decline to register such memorandum of appeal and communicate the order to the appellant within seven days thereof.

(5) An appeal against the order of the Registrar shall be made within 15 days of receiving of such order to the Presiding Officer or in his temporary absence, to the Member authorized under sub-rule (2) of rule 5, whose decision thereon shall be final.

Fee (Rule 9)

(1) Every memorandum of appeal shall be accompanied with a fee provided in sub-rule (2) and such fee may be remitted in the form of crossed demand draft drawn on any nationalised bank in favour of “the Registrar, Securities Appellate Tribunal” payable at the station where the registry is located.

(2) The amount of fee payable in respect of appeal against adjudication orders made under Chapter VIA of the Act shall be as follows : –

Amount of penalty imposed	***Amount of fees payable***
Less than rupees ten thousand	Rs. 500
Rupees ten thousand or more but less than one lakh	Rs. 1,200
Rupees one lakh or more	Rs. 1200 plus Rs. 500 for every additional one lakh of penalty or fraction thereof, subject to a maximum of Rs. 1,50,000.
Amount of fee payable in respect of any other appeal against an order of the Board under the Act shall be rupees five thousand only	

Contents of memorandum of appeal (Rule10)

(1) Every memorandum of appeal filed under rule 4 shall set forth concisely under distinct heads, the grounds of such appeal without any argument or narrative, and such ground shall be numbered consecutively and shall be in the manner provided in sub-rule (1) of rule 7.

(2) It shall not be necessary to present separate memorandum of appeal to seek interim order or direction if in the memorandum of appeal, the same is prayed for.

Documents to accompany memorandum of appeal (Rule 11)

(1) Every memorandum of appeal shall be in five copies and shall be accompanied with copies of the order, at least one of which shall be a certified copy, against which the appeal is filed.

(2) Where a party is represented by an authorised representative, a copy of the authorisation to act as the authorised representative and the written consent thereto by such authorised representative, shall be appended to the appeal.

Plural remedies (Rule 12)

A memorandum of appeal shall not seek relief or reliefs therein against more than one order unless the reliefs prayed for are consequential.

Notice of appeal to the respondent (Rule 13)

Copy of the memorandum of appeal and paper book shall be served by the Registrar on the respondent as soon as they are registered in the registry, by hand delivery, or by Registered Post or Speed Post.

Filing of reply to the appeal and other documents by the respondent (Rule 14)

(1) The respondent may file five complete sets containing the reply to the appeal along with documents in a paper book form with the registry within one month of the service of the notice on him of the filing of the memorandum of appeal.

(2) Every reply, application or written representation filed before the Appellate Tribunal shall be verified in the manner provided for, in the Form.

(3) A copy of every application, reply, document or written material filed by the respondent before the Appellate Tribunal shall be forthwith served on the appellant, by the respondent.

(4) The Appellate Tribunal may, in its discretion, on application by the respondent allow the filing of reply referred to in sub-rule (1) after the expiry of the period referred to therein.

Date of hearing to be notified (Rule 15)

The Appellate Tribunal shall notify the parties of the date of hearing of the appeal in such manner as the Presiding Officer may by general or special order direct.

Hearing of appeal (Rule 16)

(1) On the day fixed or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Securities Appellate Tribunal shall, then, if necessary, hear the Board or its authorised representative against the appeal, and in such case the appellant shall be entitled to reply. During the course of the hearing of appeal the written arguments could be supplemented by time-bound oral arguments :

Provided that in case of temporary absence of the Presiding Officer or of the Member authorised by the Government under sub-rule (2) of rule 5, the Presiding Officer can authorise the other Member present on that day to hear the Board or authorised representative against the appeal.

(2) In case the appellant does not appear in person or through an authorised representative when the appeal is called for hearing, the Securities Appellate Tribunal may dispose of the appeal on the merits:

Provided that where an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Securities Appellate Tribunal that there was sufficient cause for his non-appearance, when the appeal was called for hearing, the Securities Appellate Tribunal shall make an order setting aside the ex parte order and restore the appeal.

Dress regulations for the Presiding Officer, Members and for the representative of the parties (Rule 17)

(1) The dress of the Presiding Officer shall be white or striped or black pant with black coat over white shirt and band or buttoned up black coat and band. The dress for the two other Members shall be white or striped or black pant with black coat over white shirt and black tie or buttoned up black coat. In the case of a female Presiding Officer or a Member, the dress shall be black coat over a white saree.

(2) Every authorised representative, other than a relative or regular employee of the party shall appear before the Appellate Tribunal in his professional dress if any, and if there is no such dress, a male, in a suit or buttoned-up coat over a pant or national dress that is a long buttoned-up coat on dhoti or churidar pyjama, and a female, in a coat over white or any other sober coloured saree or in any other sober dress.

(3) All other persons appearing before the Appellate Tribunal shall be properly dressed.

Order to be signed and dated (Rule 18)

(1) Every order of the Appellate Tribunal shall be signed and dated by the Presiding Officer and the two other members. The Presiding Officer will have powers to pass interim orders or injunction, subject to reasons to be recorded in writing, which it considers necessary in the interest of justice.

(2) Orders shall be pronounced in the sitting of the Appellate Tribunal by the Presiding Officer or in case of the temporary absence of the Presiding Officer, by the Member authorized under sub-rule (2) of rule 5.

Publication of orders (Rule 19)

The orders of the Appellate Tribunal, as are deemed fit for publication in any authoritative report or the press may be released for such publication on such terms and conditions as the Presiding Officer may lay down.

Communication of orders (Rule 20)

A certified copy of every order passed by the Appellate Tribunal shall be communicated to the Board, the Adjudicating Officer and to the parties, as the case may be.

Orders and directions in certain cases (Rule 21)

The Appellate Tribunal may make, such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

Fee for inspection of records and obtaining copies thereof (Rule 22)

(1) A fee of rupees twenty, for every hour or part thereof of inspection subject to a minimum of rupees one hundred shall be charged for inspecting the records of a pending appeal by a party thereto.

(2) A fee of rupees five for a folio or part thereof not involving typing and a fee of rupees ten for a folio or part thereof involving typing of statement and figures shall be charged for providing copies of the records of an appeal, to a party thereto.

Working hours of the Appellate Tribunal (Rule 23)

(1) The office of the Appellate Tribunal shall observe such public and other holidays as observed by the offices of the Central Government in the locality where the office of the Appellate Tribunal is situated.

(2) The Appellate Tribunal shall, subject to any other order made by the Presiding Officer, remain open on working days from 10 AM to 6.00 PM. But no work, unless of an urgent nature, shall be admitted after 4.30 PM on any working day.

(3) The sitting hours of the Appellate Tribunal shall ordinarily be from 10.30 AM to 1.00 PM and 2.00 PM to 5.00 PM, subject to any order made by the Presiding Officer.

Holiday (Rule 24)

Where the last day for doing any act falls on a day on which the office of the Appellate Tribunal is closed and by reason thereof the act cannot be done on that day, it may be done on the next day on which that office opens.

Functions of the Registrar (Rule 25)

(1) The Registrar shall discharge his functions under the general superintendence of the Presiding Officer or in the temporary absence of the Presiding Officer, the Member authorized under sub-rule (2) of rule 5.

He shall discharge such other functions as are assigned to him under these rules by the Presiding

Officer or in the temporary absence of the Presiding Officer, by the Member authorized under sub-rule (2) of rule 5, by a separate order in writing.

(2) He shall have the custody of the records of the Appellate Tribunal.

(3) The official seal of the Appellate Tribunal shall be kept in the custody of the Registrar.

(4) Subject to any general or special direction by the Presiding Officer, or in the temporary absence of the Presiding Officer, the Member authorized under sub-rule (2) of rule 5, the official seal of the Appellate Tribunal shall not be affixed to any order, summons or other process save under the authority in writing from the Registrar.

(5) The official seal of the Appellate Tribunal shall not be affixed to any certified copy issued by the Appellate Tribunal, save under the authority in writing of the Registrar.

Additional functions and duties of Registrar (Rule 26)

In addition to the functions and duties assigned in the rules, the Registrar shall have the following functions and duties subject to any general or special order of the Presiding Officer or in his temporary absence, the Member authorized under sub-rule (2) of rule 5, namely : –

(i) to receive all appeals, replies and other documents;

(ii) to decide all questions arising out of the scrutiny of the appeal before they are registered;

(iii) to require any appeal presented to the Appellate Tribunal to be amended in accordance with the rule;

(iv) subject to the directions of the Presiding Officer, or in his temporary absence, the member authorized under sub-rule (2) of rule 5, to fix date of hearing of the appeal or other proceedings and issue notices thereon;

(v) to direct any formal amendment or records;

(vi) to order grant of copies of documents to parties to proceedings;

(vii) to grant leave to inspect the record of the Appellate Tribunal;

(viii) to dispose of all matters relating to the service of notices or other processes, application for the issue of fresh notice or for extending the time for or ordering a particular method of service on a respondent including a substituted service by publication of the notice by way of advertisement in the newspapers; and

(ix) to requisition records from the custody of any court or other authority.

Seal and emblem (Rule 27) The official seal and emblem of the Appellate Tribunal shall be such as the Central Government may specify.

Appeal to Supreme Court (Section 15Z of SEBI Act, Section 22F of Securities Contract (Regulation) Act, 1956 and Section 23F of Depositories Act, 1996)

Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order.

The Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

LESSON ROUND-UP

- Securities Exchange Board of India was established, with a twofold objective of :
  - (a) protecting the interests of investors in securities; and
  - (b) promoting the development of and to regulate the securities market.
- The SEBI Act laid down the heavy penal consequences for non-compliance under section 15A to 15HB of the Act.
- For the purpose of adjudging an offence, the Securities and Exchange Board of India may appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.
- All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.
- Consent Order means an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws.
- A Compounding is a process whereby an accused pays compounding charges in lieu of undergoing consequences of prosecution.
- Securities Appellate Tribunal (SAT) is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India Act, 1992.
- Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court.

GLOSSARY

Consent Order-an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws.

Penalty-a punishment for breaking a law, rule or contract

Insider Trading-the practice of purchasing or selling a publicly-traded company's securities while in possession of material information that is not yet public information.

Appeal- the legal process to ask a higher court to review a decision by a judge in a lower court (trial court).

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. A fraud is punishable offence whereas the non-compliance also attracts the penalties. Differentiate between the two concepts i.e. Fraud and Non-Compliance.
2. The price of equity share of a listed company viz. NextDial Ltd. (NDL) increased from Rs.10 to high of Rs.50 i.e. a rise of 500% during the period 1st April, 2022 to 30th Sept., 2022. NDL had entered into a Share Purchase Agreement (SPA) with the proposed acquirer(s) to acquire 40% of the subscribed equity share capital as of 31st Aug., 2022 which would result in change of management. This initial discussion on the deal was made on 1st April, 2022 but SPA was signed on 25th April, 2022.

During 1st April, 2022 to 30th Sept., 2022, the promoter and his wife dealt in the script of NextDial Ltd. Referring to the provisions of SEBI (PIT) Regulations, answer the following :

(i) Define Unpublished Price Sensitive Information.

(ii) Whether there was any Unpublished Price Sensitive Information (UPSI) ?

(iii) What will be the date of UPSI ?

(iv) What are the factors to be taken into account by the adjudicating officer while imposing penalty for the act ?

3. Distinguish between the following :

    (i) Fine and Penalty

    (ii) Civil Offence and Criminal Offence

    (iii) Composition and Consent

4. PQ Limited was a Company listed on XYZ Stock Exchange. The Company was making continuous losses and was not performing well. There were also reports of alleged financial irregularities in media. Also, many complaints were received by Securities Board of India (SEBI), regarding its listed securities. Subsequently, SEBI passed an Order to delist the securities of the Company from the said stock exchange.

    As a Company Secretary, advise PQ Limited for further course of action.

5. Write short notes on Consent Order issued by SEBI

6. SEBI issued an order against the directors of the Shyam and Company Ltd., a listed entity, against their failure to comply with the some of the provisions of the SEBI (LODR) Regulations, 2015 and levied penalty for the same. However, the directors of the company are of the opinion the penalty levied by the SEBI for non-compliance of the provisions are not applicable to the company since these provisions came into effect after the amendment in the SEBI (LODR) Regulations, 2015 and company had complied with the old provisions, which were applicable on the company at the prevailing time. Advise the company the legal recourse available to it, quoting the relevant provisions of the law.

7. What factors Adjudicating Officer shall consider while adjudging quantum of penalty ?

8. ABD Limited (listed Company) has failed to redress investors' grievances relating to the Transfer of the share and indulges in fraudulent and unfair trade practices relating to securities. Write down the penalties which could be faced by the company under SEBI Act, 1992.

9. Explain the effect of Settlement Order on third party rights or other proceedings. Also, state the circumstances under which the Settlement Order is revoked.

10. ABD Limited (listed Company) has failed to redress investors' grievances relating to the Transfer of the share and indulges in fraudulent and unfair trade practices relating to securities. Write down the penalties which could be faced by the company under SEBI Act, 1992.

LIST OF FURTHER READINGS

- SEBI ACT, 1992
- Depositories Act, 1996
- Securities Contract (Regulations) Act, 1956

OTHER REFERENCES (Including Websites/Video Links)

- https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=1&smid=0
- https://www.indiacode.nic.in/
- https://sat.gov.in/

Appearance before other Regulatory and Quasi-judicial Authorities

Lesson 14

KEY CONCEPTS

■ Appearance ■ Regulatory authorities ■ Quasi Judicial Authorities ■ Right to Legal Representation

Learning Objectives

To understand:

- Concept of Appearances and the recognitions of Company Secretaries to appear before various tribunals/ quasi-judicial authorities such as National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), Securities Appellate Tribunal, Competition Commission of India etc.
- Appearances before authorities such as RD/SFIO/RBI/ED/Stock Exchange/RERA/RERA Appellate Tribunal/IPR Authorities
- The provisions of various corporate and other laws, rules and regulations related to appearances
- The importance for professionals to possess a professional look and demeanor to project a professional and competent image in the corporate world as well as while appearing before the tribunals and other quasi-judicial bodies.
- The legal provisions pertaining to appearance before various tribunals/quasi-judicial bodies
- Case Study on Corporate Insolvency Resolution Process
- Case study on combinations under the Competition Act, 2002

Lesson Outline

- Introduction
- Procedure for Appearance
- Right to legal representation
- Appearance under the Companies Act, 2013
- Appearance under TRAI Act, 1997
- Appearance under SEBI Act, 1992
- Appearance under the Competition Act, 2002
- Appearance under the Income-tax Act, 1961
- Appearance under Real Estate (Regulation and Development) Act, 2016
- Appearance under the Reserve Bank of India Act, 1934
- Appearance before the Enforcement Directorate
- Appearance before the Stock Exchanges
- Appearance before the IPR Authorities
- Appellate Authorities under the Companies Act, 2013
- Appellate Authorities under SEBI Act
- Appellate Authorities under the Income-tax Act, 1961
- Appellate Authorities under the Competition Act, 2002
- Case Study on Corporate Insolvency Resolution Process
- Case study on combinations under the Competition Act, 2002
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other references (Including Websites / Video Links)

REGULATORY FRAMEWORK

- The Companies Act, 2013
- The TRAI Act, 1997
- The SEBI Act, 1992
- The Income Tax Act, 1961
- The Competition Act, 2002
- Real Estate (Regulation and Development) Act, 2016

INTRODUCTION

The corporate sector has recognized the role of the Company Secretaries as a compliance officer and as a nodal point of contact between the company and its shareholders, debenture holders, depositors, financial institutions and the Government. The Company Secretaries in practice are rendering value added services to corporate sector as independent professionals. Apart from this, a Company Secretary can appear as an authorized representative before NCLT, Competition Commission of India (CCI), Securities Appellate Tribunal (SAT), Telecom Regulatory Authority of India (TRAI) and various other Tribunals.

Appearance before other regulatory and quasi-judicial authorities may be required in various legal matters. These authorities include the National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), Competition Commission of India (CCI), Securities and Exchange Board of India (SEBI), and various other tribunals, commissions, and authorities.

Quasi-Judicial Authority

A quasi-judicial authority is an administrative body or agency that has been granted the power to make decisions that affect the legal rights, duties, or privileges of individuals or entities. These authorities are authorized to conduct hearings, take evidence, and make findings of fact and law, which are binding on the parties involved. Quasi-judicial authorities are distinct from judicial authorities, which are courts that have the power to hear and determine legal disputes.

Quasi-judicial authorities are established by law and are typically created to regulate specific industries or sectors, such as securities, telecommunications, and real estate. Examples of quasi-judicial authorities in India include the Securities and Exchange Board of India (SEBI), the Telecom Regulatory Authority of India (TRAI), and the Real Estate Regulatory Authority (RERA). These authorities have been granted powers to regulate and enforce compliance with laws related to their respective industries and are empowered to adjudicate disputes and impose penalties or sanctions.

Quasi-judicial authorities are required to follow the principles of natural justice, which include the right to be heard, the right to present evidence, and the right to a fair and impartial hearing. Parties before quasi-judicial authorities also have the right to legal representation and to appeal against the decisions of the authorities to higher courts or tribunals.

These authorities play an important role in regulating and enforcing compliance with laws related to specific industries or sectors in India. They are authorized to make binding decisions that affect the legal rights, duties, or privileges of individuals or entities and are required to follow the principles of natural justice.

PROCEDURE FOR APPEARANCE

The procedure for appearing before these authorities may vary depending on the specific authority and the nature of the legal matter. However, some general guidelines for appearance before regulatory and quasi-judicial authorities are as follows:

1. **Preparation of the case**

   Before appearing before a regulatory or quasi-judicial authority, it is essential to prepare the case thoroughly. This includes reviewing all relevant documents, identifying key legal issues, and preparing arguments and evidence to support the case.

2. **Appointment of legal counsel**

   It is advisable to appoint legal counsel who is experienced in representing clients before the specific regulatory or quasi-judicial authority. Legal counsel can provide valuable guidance and represent the client in the proceedings.

3. **Compliance with procedural rules**

   It is essential to comply with all procedural rules and deadlines of the regulatory or quasi-judicial authority. Failure to comply with these rules can result in adverse consequences, including dismissal of the case.

4. **Conduct during the proceedings**

   It is important to maintain a professional and respectful demeanor during the proceedings. This includes addressing the authority with appropriate language, presenting arguments clearly and concisely, and refraining from any behavior that may be deemed disrespectful or disruptive.

5. **Compliance with orders**

   It is important to comply with any orders or directions given by the regulatory or quasi-judicial authority. Failure to comply with these orders can result in adverse consequences, including fines, penalties, or other sanctions.

   The appearance before regulatory and quasi-judicial authorities requires thorough preparation, compliance with procedural rules, professional conduct during the proceedings, and compliance with any orders or directions given by the authority. Seeking the guidance of experienced legal counsel can help ensure a successful outcome in the proceedings.

RIGHT TO LEGAL REPRESENTATION

The right to legal representation is a fundamental right that is recognized in most legal systems around the world. This right ensures that individuals have access to legal counsel and representation, particularly in legal proceedings where their rights or interests are at stake. The right to legal representation is also recognized in international human rights law, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

In many legal systems, the right to legal representation is enshrined in law and guaranteed by the constitution. In criminal cases, for example, the accused person has a right to be represented by a lawyer and to receive legal aid if they cannot afford one. Similarly, in civil cases, parties have a right to be represented by a lawyer, although legal aid may not be available in all cases.

The right to legal representation is essential for several reasons. First, it helps to ensure that legal proceedings are fair and just. Legal representation can help to balance the power dynamic between parties, particularly in cases where one party has greater resources or influence than the other. Second, legal representation can help to ensure that the rights and interests of individuals are protected and advanced. This is particularly important in cases where fundamental rights, such as the right to life, liberty, and property, are at stake.

In some cases, the right to legal representation may be limited or restricted. For example, in certain administrative proceedings or disciplinary proceedings, parties may not have a right to legal representation. However, even in such cases, parties may still be entitled to a fair hearing and other procedural safeguards.

In conclusion, the right to legal representation is a fundamental right that is essential for ensuring fair and just legal proceedings. This right helps to balance the power dynamic between parties, protects the rights and interests of individuals, and promotes the rule of law.

APPEARANCE UNDER THE COMPANIES ACT, 2013

Under the Companies Act, 2013, the right to legal representation is recognized and protected in certain situations. The Act allows for companies to be represented in legal proceedings by authorized representatives, such as Company Secretaries, who are appointed by the Company.

Section 432 of the Companies Act, 2013 dealing with right to legal representation envisages that the applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.

However, it is important to note that the right to legal representation under the Companies Act, 2013, is limited in certain respects. For example, the Act does not provide for the appointment of legal representatives for individual directors or officers of the company who may be named as parties in legal proceedings. In such cases, individual directors or officers may need to seek their own legal representation.

Under the Companies Act, 2013, there are various situations where a person may be required to appear before regulatory or quasi-judicial authorities. These appearances may be required in the context of compliance and enforcement proceedings, such as investigations, inspections, and adjudication of disputes.

Some of the key provisions related to appearance under the Companies Act, 2013, are as follows:

1. **Appearance before the Registrar of Companies (ROC)**

   The ROC is a regulatory authority responsible for administering the provisions of the Companies Act, 2013. Companies and their officers may be required to appear before the ROC in relation to various compliance matters, such as filing of returns and other documents, inspection of books and records, and verification of registered office address.

2. **Appearance before the National Company Law Tribunal (NCLT)**

   The NCLT is a quasi-judicial body that adjudicates disputes and grievances related to companies and their affairs. Parties may be required to appear before the NCLT in various types of proceedings, such as merger and acquisition approvals, insolvency and bankruptcy proceedings, and disputes related to the interpretation of the Companies Act, 2013.

3. **Appearance before the Serious Fraud Investigation Office (SFIO)**

   The SFIO is a specialized investigating agency that is empowered to investigate cases of fraud and financial irregularities related to companies. Parties may be required to appear before the SFIO in connection with investigations related to corporate fraud, money laundering, and other financial crimes.

4. **Appearance before the Securities and Exchange Board of India (SEBI):**

   SEBI is a regulatory authority that is responsible for regulating and overseeing the securities market in India. Companies and individuals may be required to appear before SEBI in connection with various compliance and enforcement matters, such as insider trading, market manipulation, and disclosure requirements.

In conclusion, under the Companies Act, 2013, there are various situations where a person may be required to appear before regulatory or quasi-judicial authorities. It is important to comply with these requirements and to seek legal advice and representation as necessary to protect one's rights and interests.

APPEARANCE UNDER THE TRAI ACT, 1997

Section 17 of the Telecom Regulatory Authority of India (TRAI) Act, 1997 authorizes Company Secretaries to present his or its case before the Appellate Tribunal. As per the Explanation appended to the Section 'Company Secretary' means a Company Secretary as defined in clause (c) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub- section (1) of Section 6 of that Act.

The Telecom Regulatory Authority of India (TRAI) is an independent regulatory authority established under the TRAI Act, 1997, to regulate the telecommunications industry in India. The TRAI Act, 1997, empowers the TRAI to issue regulations, guidelines, and orders for the telecommunication sector in India. In this context, the TRAI may require certain parties to appear before it in various proceedings.

Some of the key provisions related to appearance under the TRAI Act, 1997, are as follows:

1. **Appearance before the TRAI in tariff-related matters**

   The TRAI has the power to regulate the tariffs charged by telecom service providers in India. In this context, the TRAI may hold hearings and require telecom service providers and other parties to appear before it to provide evidence and arguments on tariff-related matters.

2. **Appearance before the TRAI in consumer-related matters**

   The TRAI is responsible for protecting the interests of telecom consumers in India. In this context, the TRAI may hold hearings and require telecom service providers and other parties to appear before it to provide evidence and arguments on consumer-related matters, such as quality of service, billing disputes, and complaints related to unsolicited commercial communications.

3. **Appearance before the TRAI in licensing-related matters**

   The TRAI is responsible for granting and revoking licenses for telecom service providers in India. In this context, the TRAI may hold hearings and require parties to appear before it to provide evidence and arguments on licensing-related matters, such as eligibility criteria, license fees, and conditions for license renewal.

4. **Appearance before the TRAI in disputes and grievances**

   The TRAI has the power to adjudicate disputes and grievances related to the telecommunications industry in India. In this context, the TRAI may hold hearings and require parties to appear before it to provide evidence and arguments on disputes and grievances related to telecom services, licenses, and tariffs.

   In conclusion, under the TRAI Act, 1997, parties may be required to appear before the TRAI in various proceedings related to the regulation of the telecommunications industry in India. It is important to comply with these requirements and to seek legal advice and representation as necessary to protect one's rights and interests.

APPEARANCE UNDER THE SEBI ACT, 1992

Securities and Exchange Board of India (SEBI) Act, 1992 under Section 15V permits the appellant either to appear in person or authorise one or more of practising Company Secretaries, Chartered Accountants, Cost Accountants or Legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

The Securities and Exchange Board of India (SEBI) is the regulator of the securities market in India. SEBI is empowered under the SEBI Act, 1992 to regulate and oversee the functioning of securities markets, to protect the interests of investors and to promote the development of the securities market in India. SEBI has the power to investigate, regulate, and take enforcement action against companies, intermediaries, and individuals engaged in the securities market. In this context, the SEBI Act, 1992 provides for various provisions related to appearance before SEBI.

Some of the key provisions related to appearance under the SEBI Act, 1992, are as follows:

1. **Appearance before SEBI in compliance-related matters**

   SEBI has the power to investigate and take enforcement action against companies and intermediaries engaged in the securities market for non-compliance with SEBI regulations and guidelines. In this context, SEBI may issue show cause notices and require parties to appear before it to provide evidence and arguments on compliance-related matters.

2. **Appearance before SEBI in investigations**

   SEBI has the power to investigate cases related to market manipulation, insider trading, and other fraudulent practices in the securities market. In this context, SEBI may require parties to appear before it to provide evidence and arguments in connection with investigations.

3. **Appearance before SEBI in adjudication proceedings**

   SEBI has the power to adjudicate disputes and grievances related to the securities market. In this context, SEBI may require parties to appear before it to provide evidence and arguments in connection with adjudication proceedings related to violations of SEBI regulations and guidelines.

4. **Appearance before SEBI in appeals**

   The SEBI Act, 1992 provides for appeals against SEBI orders and decisions to the Securities Appellate Tribunal (SAT) and to the Supreme Court. In this context, parties may be required to appear before SAT or the Supreme Court to provide evidence and arguments in connection with appeals.

   Under the SEBI Act, 1992, parties may be required to appear before SEBI in various proceedings related to the regulation of the securities market in India. It is important to comply with these requirements and to seek legal advice and representation as necessary to protect one's rights and interests.

APPEARANCE UNDER THE COMPETITION ACT, 2002

Competition Authorities and the Companies world over avail services of professionals to guide and advise them on various aspects of competition law. Professionals also assist companies in designing, implementing and maintaining effective competition compliance programmes.

Sections 35 of the Competition Act, 2002 authorises Company Secretaries in practice to appear before Competition Commission of India. Besides, there are a number of concepts and terms such as value of assets, turnover, determination of market, relevant market, geographic market which require active professional involvement and advice. Further, Competition Act, 2002 provides a number of factors to be considered by the Competition Commission of India in determining appreciable adverse effect on competition.

The Competition Act, 2002 is the primary legislation governing competition law in India. The Competition

Commission of India (CCI) is the regulatory body responsible for enforcing competition law in India. The CCI has the power to investigate, regulate, and take enforcement action against companies, intermediaries, and individuals engaged in anti-competitive practices. In this context, the Competition Act, 2002 provides for various provisions related to appearance before the CCI.

Some of the key provisions related to appearance under the Competition Act, 2002 are as follows:

1. **Appearance before the CCI in complaint and information matters**

   The CCI has the power to initiate investigations into anti-competitive practices based on complaints or information received from various sources. In this context, the CCI may issue notices and require parties to appear before it to provide evidence and arguments in connection with such investigations.

2. **Appearance before the CCI in combination matters**

   The CCI has the power to review mergers, acquisitions, and other forms of combinations that may have an adverse effect on competition in India. In this context, the CCI may require parties to appear before it to provide evidence and arguments in connection with such reviews.

3. **Appearance before the CCI in appeal and review matters**

   The Competition Act, 2002 provides for appeals against CCI's orders to the National Company Law Appellate Tribunal (NCLAT) and to the Supreme Court. In this context, parties may be required to appear before the NCLAT or the Supreme Court to provide evidence and arguments in connection with such appeals.

4. **Appearance before the CCI in leniency matters**

   The Competition Act, 2002 provides for a leniency program to encourage companies and individuals to come forward and disclose anti-competitive practices. In this context, parties seeking leniency may be required to appear before the CCI to provide evidence and arguments in connection with such disclosures.

   Under the Competition Act, 2002, parties may be required to appear before the CCI in various proceedings related to the regulation of competition in India. It is important to comply with these requirements and to seek legal advice and representation as necessary to protect one's rights and interests.

5. **Company Secretary as an expert**

   According to section 35(2) of the Competition Act, 2002, a party may call upon experts from the fields of economics, commerce, international trade or from any other discipline to provide an expert opinion in connection with any matter related to a case. A CS in a competent professional that may give advices to the parties under section 35(2) on calling upon by any party.

APPEARANCE UNDER REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

The Real Estate (Regulation and Development) Act, 2016 (RERA) is a legislation enacted by the Indian Parliament to regulate and promote the real estate sector. The Act provides for the establishment of Real Estate Regulatory Authorities (RERAs) in each state and union territory of India to oversee the implementation of the Act and to resolve disputes related to real estate projects. The Act also provides for the establishment of an Appellate Tribunal to hear appeals against orders and decisions of the RERAs.

As per Section 56 of the Real Estate (Regulation and Development) Act, 2016 a Company Secretary holding certificate of practice can appear before Appellate Tribunal or a Regulatory Authority or Adjudicating Officer on behalf of applicant or appellant as the case may be.

Hence a Company Secretary holding certificate of practice can –

- Represent a person (promoter) before any real estate regulatory authority for registration of real estate project,
- Represent a person before real estate appellate tribunal.
- Represent a person before Adjudicating Officer.

In this context, the RERA provides for various provisions related to appearance before the RERAs and the Appellate Tribunal. Some of the key provisions related to appearance under the RERA are as follows:

1. **Appearance before the RERA in complaint matters**

   The RERA provides for the filing of complaints by aggrieved parties against real estate developers and promoters for non-compliance with the provisions of the Act. In this context, parties may be required to appear before the RERA to provide evidence and arguments in connection with such complaints.

2. **Appearance before the RERA in registration matters**

   The RERA provides for the registration of real estate projects by developers and promoters. In this context, parties may be required to appear before the RERA to provide evidence and arguments in connection with the registration of such projects.

3. **Appearance before the RERA in dispute resolution matters**

   The RERA provides for the resolution of disputes related to real estate projects by the RERAs. In this context, parties may be required to appear before the RERA to provide evidence and arguments in connection with such disputes.

4. **Appearance before the Appellate Tribunal in appeal matters**

   The RERA provides for the filing of appeals against orders and decisions of the RERAs to the Appellate Tribunal. In this context, parties may be required to appear before the Appellate Tribunal to provide evidence and arguments in connection with such appeals.

   Under the RERA, parties may be required to appear before the RERAs and the Appellate Tribunal in various proceedings related to the regulation and promotion of the real estate sector in India. It is important to comply with these requirements and to seek legal advice and representation as necessary to protect one's rights and interests.

APPEARANCE UNDER THE RESERVE BANK OF INDIA ACT, 1934

Under the Reserve Bank of India Act, 1934, certain provisions require the appearance of Company Secretaries for specific matters related to banking and financial institutions. When Company Secretaries are required to make an appearance, they play a crucial role in ensuring compliance with regulatory requirements and facilitating communication between the organization and the Reserve Bank of India (RBI). Here are some key considerations for the professionals appearing under The Reserve Bank of India Act, 1934:

1. **Understand the provisions:** Familiarize yourself with the relevant provisions of The Reserve Bank of India Act, 1934 that require the appearance of Company Secretaries. The study of the specific sections and regulations to grasp the scope of responsibilities and obligations associated with these appearances.
2. **Prepare relevant information:** Gather all the necessary information, documents, reports, and records related to the matter at hand. This may include financial statements, compliance reports, board resolutions, or any other relevant documentation that pertains to the appearance.
3. **Consult with internal stakeholders:** Engage with relevant internal stakeholders, such as senior

management, legal teams, and compliance departments, to understand the organization's position, address any concerns, and ensure alignment with the RBI's requirements.

4. **Engage legal counsel, if necessary:** Depending on the complexity of the matter and the potential legal implications, it may be advisable to seek guidance from legal counsel experienced in RBI-related matters. They can provide legal advice and help you navigate the regulatory requirements.
5. **Prepare for the appearance:** Develop a clear understanding of the issues to be discussed during the appearance and prepare your responses accordingly. Consider the questions that may arise and ensure that you have a comprehensive understanding of the organization's compliance status and any remedial actions taken, if applicable.
6. **Maintain professionalism:** When appearing before the RBI, maintain a professional demeanor. Dress appropriately, arrive on time, and demonstrate respect towards the RBI officials. Engage in constructive dialogue and provide accurate information in a clear and concise manner.
7. **Comply with RBI's instructions:** Follow any specific instructions or guidelines provided by the RBI regarding the appearance. This may involve providing requested information or documents, adhering to timelines, or following any other procedural requirements specified by the RBI.
8. **Facilitate communication:** As a Company Secretary, you play a crucial role in facilitating effective communication between the organization and the RBI. Ensure that accurate and relevant information is conveyed during the appearance, and address any queries or concerns raised by the RBI officials.
9. **Take notes and maintain records:** Keep detailed records of the discussions, decisions, and outcomes of the appearance. Maintain accurate minutes of meetings, correspondence, and any other relevant documentation for future reference.
10. **Follow up and compliance:** After the appearance, collaborate with internal stakeholders to address any follow-up actions required by the RBI. Ensure that the organization promptly complies with any directives, rectification measures, or additional information requests provided by the RBI.

    It is important to note that the specific procedures and requirements for Company Secretaries appearing under The Reserve Bank of India Act, 1934 may vary depending on the particular circumstances and the RBI's instructions. Collaborating closely with internal stakeholders and seeking appropriate legal advice can help ensure compliance and successful outcomes.

APPEARANCE BEFORE THE ENFORCEMENT DIRECTORATE

The Company Secretaries may be required to appear before the Enforcement Directorate (ED) in cases related to financial offenses, money laundering, or economic crimes. As a Company Secretary, your role is crucial in facilitating compliance and providing relevant information. The general guidelines which are applicable to Appearance under RBI is same as when appearing before the Enforcement Directorate.

It is important to note that the specific procedures and requirements for appearances under the Enforcement Directorate Act may vary depending on the nature of the case, the specific provisions invoked, and the Enforcement Directorate's instructions. Working closely with legal counsel and following their guidance is essential to ensure compliance, protect your rights, and effectively navigate the proceedings.

APPEARANCE BEFORE THE STOCK EXCHANGES

When making an appearance before stock exchanges, it typically involves matters related to compliance, regulatory requirements, or specific inquiries related to trading activities or listed securities. The general guidelines which are applicable to Appearance under RBI and ED are same as when appearing before the Stock Exchanges.

The specific procedures, rules, and requirements for appearances before stock exchanges can vary depending on the exchange, the nature of the case, and the specific rules and regulations in place.

APPEARANCE BEFORE THE IPR AUTHORITIES

When making an appearance before Intellectual Property Rights (IPR) authorities, it typically relates to matters such as trademark registrations, patent applications, copyright disputes, or other intellectual property-related issues. The general guidelines which are applicable to Appearance under RBI, ED and Stock Exchanges are same as when appearing before the IPR Authorities. The specific procedures, rules, and requirements for appearances before IPR authorities may vary depending on the jurisdiction and the specific intellectual property laws in place.

APPELLATE AUTHORITIES UNDER THE COMPANIES ACT, 2013

The Companies Act, 2013 is a legislation enacted by the Indian Parliament to regulate the incorporation, management, and dissolution of companies in India. The Act provides for various provisions related to the establishment of Appellate Authorities for hearing appeals against orders and decisions of the National Company Law Tribunal (NCLT).

The following are the Appellate Authorities under the Companies Act, 2013:

1. National Company Law Appellate Tribunal (NCLAT)

As per Section 408 of the Companies Act, 2013, the Central Government constituted Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under the Act or any other law for the time being in force.

The NCLAT is the principal Appellate Authority established under the Companies Act, 2013. It hears appeals against orders and decisions of the NCLT, which is the adjudicating authority under the Act. The NCLAT has its principal bench in New Delhi and may hold sittings in other parts of India as well.

Under Section 410 of the Companies Act, 2013, the Central Government constituted an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a Chairperson and such number of Judicial and Technical Members, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against, –

(a) the order of the Tribunal or of the National Financial Reporting Authority under the Companies Act, 2013; and

b) any direction, decision or order referred to in section 53A of the Competition Act, 2002 in accordance with the provisions of that Act.

Section 421 of the Companies Act, 2013 provides that any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

It may be noted that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

On the receipt of an appeal, the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

2. **Appeal to Supreme Court**

   As per Section 423 of the Companies Act, 2013 any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

   It may be noted that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

3. **Regional Director**

   The Regional Director is a statutory authority appointed by the Central Government under the Companies Act, 2013. The Regional Director has the power to hear appeals against orders and decisions of the Registrar of Companies (RoC), which is the authority responsible for the registration of companies under the Act. The Regional Directors supervise the working of the offices of the Registrars of Companies and Official Liquidators located in different locations in the country. They also maintain liaison between the respective State Governments and the Central Government on matters relating to the administration of the Companies Act, 2013. The Regional Directors have been delegated powers to directly take up work and dispose off certain business under the provisions of Companies Act.

   Registrars of Companies (ROCs) appointed under Section 396 of Companies Act, 2013 are vested with the primary duty of registering companies in States and Union Territories and ensuring that such companies comply with statutory requirements under the Act. These offices function as a registry of records, relating to the companies registered with them. The records are available for inspection by the public on payment of the prescribed fee. The Central Government exercises administrative control over these offices through the respective Regional Directors.

4. **Company Law Board (CLB)**

   The Company Law Board was the Appellate Authority established under the Companies Act, 1956. However, it has been dissolved and its functions have been transferred to the NCLT and NCLAT under the Companies Act, 2013.

   In conclusion, the Companies Act, 2013 provides for the establishment of the NCLAT and the Regional Director as Appellate Authorities for hearing appeals against orders and decisions of the NCLT and the RoC respectively. It is important to comply with the provisions of the Act and to seek legal advice and representation as necessary to protect one's rights and interests.

APPELLATE AUTHORITIES UNDER SEBI ACT

Appeal to the Securities Appellate Tribunal

The Securities Appellate Tribunal (SAT) is an appellate tribunal established under the Securities and Exchange Board of India (SEBI) Act, 1992, to hear appeals against orders passed by SEBI or its officers. The SAT is an independent judicial body that has the power to confirm, modify or set aside any order passed by SEBI or its officers.

As per Section 15T of the SEBI Act, 1992, any person aggrieved by an order of the Securities Exchange Board of India (Board) made under the SEBI Act, 1992 or the rules or regulations made thereunder; or by an order made by an adjudicating officer under the SEBI Act; or by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

An appeal to the SAT can be made by any person aggrieved by an order passed by SEBI or its officers, including individuals, companies, and other entities. The grounds for appeal may include errors in the order, procedural irregularities, or violations of the principles of natural justice. Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed.

The procedure for filing an appeal with the SAT involves the following steps:

1. **Filing of appeal:** The appellant must file an appeal with the SAT within 45 days from the date of the order passed by SEBI or its officers. The appeal must be filed in the prescribed format and must include all relevant documents and evidence to support the appeal.
2. **Service of notice:** Once the appeal is filed, the SAT will serve notice to SEBI or its officers, giving them an opportunity to file a reply to the appeal.
3. **Hearing:** The SAT will hear the appeal and may ask the parties to present their case and provide evidence in support of their arguments. The SAT may also seek clarification or further information from the parties if required.
4. **Decision:** After hearing the appeal, the SAT will pass an order either confirming, modifying or setting aside the order passed by SEBI or its officers. The SAT's decision is binding on all parties involved.

The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be the parties to the appeal and to the concerned Adjudicating Officer.

The appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

The SAT provides a mechanism for individuals, companies, and other entities to challenge orders passed by SEBI or its officers. The SAT's independent and impartial approach ensures that decisions are made fairly, and aggrieved parties have a right to appeal against the order.

APPELLATE AUTHORITIES UNDER THE INCOME-TAX ACT, 1961

The Income Tax Act, 1961 (the Act) is the primary legislation that governs the taxation of income in India. The Act provides for various appellate authorities to hear appeals and review orders passed by lower tax authorities. These appellate authorities play a crucial role in ensuring the effective implementation of the provisions of the Act and providing taxpayers with a mechanism to challenge tax assessments and orders.

The following are the appellate authorities under the Income Tax Act, 1961:

1. **Commissioner of Income Tax (Appeals) [CIT(A)]**

   The CIT(A) is the first appellate authority under the Act. It hears appeals filed by taxpayers against the orders passed by the Assessing Officer (AO) in relation to the assessment of income tax. The CIT(A) has the power to confirm, modify, or set aside the order of the AO.

2. **Income Tax Appellate Tribunal (ITAT)**

   The ITAT is the second appellate authority under the Act. It hears appeals filed by taxpayers against the orders passed by the CIT(A) and other tax authorities. The ITAT is an independent judicial body and has the power to confirm, modify, or set aside the order of the CIT(A) or any other tax authority.

3. **High Court**

   The High Court has the jurisdiction to hear appeals against the orders passed by the ITAT. The High Court can hear appeals on questions of law arising out of the order of the ITAT.

4. **Supreme Court of India**

   The Supreme Court of India is the highest appellate authority under the Act. It can hear appeals against the orders passed by the High Court on questions of law.

   The appellate authorities under the Income Tax Act, 1961, provide a mechanism for taxpayers to challenge tax assessments and orders. These authorities ensure that the implementation of the provisions of the Act is fair and impartial and that taxpayers' rights are protected.

APPELLATE AUTHORITIES UNDER THE COMPETITION ACT, 2002

The Competition Act, 2002 (the Act) is a legislation in India that aims to promote and sustain competition in the market, protect consumer interests, and prevent anti-competitive practices. The Act provides for the establishment of various appellate authorities to ensure the effective implementation of its provisions. These appellate authorities play a critical role in adjudicating disputes and resolving appeals related to competition law violations.

The following are the appellate authorities under the Competition Act, 2002:

1. **National Company Law Appellate Tribunal (NCLAT):**

   The NCLAT is a quasi-judicial body established under the Companies Act, 2013, and also acts as the appellate tribunal for competition-related matters. The NCLAT hears appeals against orders passed by the Competition Commission of India (CCI) and orders of the Director-General (DG) of the CCI. The NCLAT has the power to confirm, modify, or set aside any order passed by the CCI or the DG.

2. **Supreme Court of India:**

   The Supreme Court of India is the highest court of appeal in the country and has the power to hear appeals against the orders of the NCLAT. Appeals to the Supreme Court are usually filed in cases where the NCLAT has erred in law or where there is a substantial question of law to be decided.

Essar Steel matter for CIRP

Essar Steel, one of India's leading steel producers, was among the first companies to be referred to the National Company Law Tribunal (NCLT) under the Corporate Insolvency Resolution Process (CIRP) provisions of the Insolvency and Bankruptcy Code (IBC), 2016. The company had been facing financial difficulties for several years, with a debt of around Rs 54,000 crore.

Following its referral to the NCLT, a resolution professional was appointed to oversee the CIRP process. Several bids were received for the company, including those from Tata Steel and JSW Steel, both leading players in the Indian steel industry.

After evaluating the bids, the committee of creditors (CoC) approved the resolution plan submitted by JSW Steel, which involved the acquisition of Essar Steel's assets for a total consideration of Rs 19,700 crore.

However, the resolution plan faced several legal challenges, including objections raised by Essar Steel's former promoters, the Ruia family, and Standard Chartered Bank, one of the company's creditors. The Ruia family claimed that the resolution plan undervalued the company's assets, while Standard Chartered Bank argued that it was being discriminated against compared to other creditors.

The legal challenges led to a protracted legal battle that lasted for over two years and involved multiple rounds of litigation in various courts, including the Supreme Court of India. The case also highlighted several issues with the implementation of the IBC, including the need for a clear framework for dealing with operational creditors and the importance of balancing the interests of different stakeholders.

Despite the challenges, the resolution plan was eventually approved by the Supreme Court, and JSW Steel took over the assets of Essar Steel. The resolution of Essar Steel was a significant milestone in the implementation of the IBC and demonstrated the potential of the CIRP process in resolving distressed assets and preserving value for stakeholders.

This case study highlights the challenges involved in the CIRP process and underscores the importance of a transparent and efficient resolution process that enables the resolution of distressed assets while protecting the interests of different stakeholders. It also highlights the need for a clear and predictable legal framework for dealing with distressed assets and the importance of balancing the interests of different stakeholders in the resolution process.

CASE STUDY

CASE STUDY ON CORPORATE INSOLVENCY RESOLUTION PROCESS

Corporate Insolvency Resolution Process (CIRP) is a legal process that helps financially distressed companies to restructure or liquidate their assets to repay their debts to creditors. It is governed by the Insolvency and Bankruptcy Code, 2016 (IBC) and aims to provide a time-bound and structured mechanism for the resolution of insolvency in a fair and transparent manner.

1. **CIRP of Jaypee Infratech Limited (JIL)**

   A case study of a company going through the Corporate Insolvency Resolution Process can provide insights into the various stages and challenges faced by a Company and the resolution professional appointed to manage the process. Let's take the example of the case of Jaypee Infratech Limited (JIL), a real estate company in India.

   In August 2017, JIL was declared insolvent by the National Company Law Tribunal (NCLT) after it failed to repay its debts to lenders. The company had borrowed heavily from various banks and financial institutions to fund its real estate projects, but it was unable to complete the projects due to various reasons, including delays in obtaining regulatory approvals and disputes with landowners.

   The NCLT appointed an insolvency resolution professional (IRP) to manage the CIRP process for JIL. The IRP invited bids from potential investors to take over the company and complete the pending real estate projects. However, no resolution plan was approved by the creditors, and the CIRP process had to be extended several times.

   In June 2019, the Supreme Court of India ordered that the CIRP process be completed within 90 days and that only two bidders, the Suraksha Group and the NBCC, be allowed to submit their resolution plans. The Suraksha Group's bid was approved by the creditors, but it was challenged by the homebuyers who had invested in JIL's real estate projects and had not received possession of their flats.

The case went back to the Supreme Court, which directed the Suraksha Group to modify its resolution plan to address the concerns of the homebuyers. The Suraksha Group submitted a revised plan, which was approved by the creditors in March 2021.

The CIRP process for JIL, which was expected to be completed within 270 days, took more than three and a half years, highlighting the challenges faced by companies going through the process. The delay in the resolution process caused financial losses to the creditors, including banks and homebuyers, and also impacted the real estate sector as a whole.

In conclusion, the case of Jaypee Infratech Limited highlights the importance of a timely and efficient Corporate Insolvency Resolution Process to protect the interests of all stakeholders. The CIRP process needs to be streamlined and simplified to ensure that financially distressed companies can quickly restructure or liquidate their assets to repay their debts, and that the interests of all stakeholders, including creditors and homebuyers, are protected.

2. Jet Airways

Jet Airways was one of India's leading airlines until it suspended its operations in April 2019 due to financial difficulties. The airline had accumulated a debt of over Rs 8,000 crore and had been facing financial troubles for several years.

Following its suspension, the airline was referred to the National Company Law Tribunal (NCLT) under the Corporate Insolvency Resolution Process (CIRP) provisions of the Insolvency and Bankruptcy Code (IBC), 2016.

The resolution professional appointed by the NCLT invited bids from interested parties to take over the airline and revive its operations. Several bids were received, including those from a consortium led by UK-based Kalrock Capital and UAE-based entrepreneur Murari Lal Jalan, and another from a consortium led by Canadian investor Sivakumar Rasiah.

After evaluating the bids, the committee of creditors (CoC) approved the resolution plan submitted by the consortium led by Kalrock Capital and Murari Lal Jalan. The plan involved the acquisition of the airline's assets, including its brand, aircraft, and other infrastructure, and the revival of its operations.

However, the resolution plan faced several challenges, including the reluctance of the aviation regulator, the Directorate General of Civil Aviation (DGCA), to grant the necessary approvals for the revival of the airline. There were also legal challenges raised by some of the airline's creditors.

Despite the challenges, the resolution plan was eventually approved by the NCLT, and the consortium led by Kalrock Capital and Murari Lal Jalan took over the airline. The new management has since been working on reviving the airline's operations and restoring its position in the Indian aviation market.

This case highlights the challenges involved in the CIRP process, particularly in the context of the aviation sector, which is subject to a complex regulatory framework. It also underscores the importance of a robust and transparent resolution process that enables the efficient resolution of distressed assets and the preservation of value for stakeholders.

CASE STUDY

CASE STUDY ON COMBINATIONS UNDER THE COMPETITION ACT, 2002

Combinations refer to mergers, acquisitions, amalgamations, and any other form of consolidation between two or more enterprises. The Competition Act, 2002 (the Act) governs combinations in India and aims to ensure fair competition in the market and prevent abuse of market power.

1. **Acquisition of Flipkart by Walmart**

   A case study of a combination under the Act can provide insights into the legal requirements and procedures for compliance.

   One such case study is the acquisition of Flipkart, an Indian e-commerce company, by Walmart, a US-based multinational retail corporation. In May 2018, Walmart announced its acquisition of a 77% stake in Flipkart for $16 billion, making it the largest e-commerce deal in India and the largest acquisition by Walmart to date.

   The acquisition was subject to the approval of the Competition Commission of India (CCI), as it met the threshold for a combination under the Act. The parties filed a notice with the CCI, providing details of the combination and its potential effects on competition in the market.

   The CCI conducted a thorough examination of the combination, considering factors such as market share, competition, and consumer welfare. The CCI also invited comments from stakeholders, including competitors and consumers, and held hearings to assess the potential impact of the combination on the market.

   After a detailed examination, the CCI approved the combination, subject to certain conditions. The conditions included ensuring that Flipkart remained a separate entity and not a subsidiary of Walmart, and that Walmart did not have a controlling influence over Flipkart's operations.

   The CCI also directed the parties to submit periodic reports on the compliance with the conditions imposed by the CCI. The parties complied with the conditions, and the combination was completed in August 2018.

   The Flipkart-Walmart combination is a prime example of the rigorous examination conducted by the CCI in assessing combinations and ensuring fair competition in the market. The CCI's approval of the combination, subject to conditions, ensured that the interests of all stakeholders, including competitors and consumers, were protected.

   In conclusion, the Flipkart-Walmart combination case study highlights the legal requirements and procedures for compliance with the Competition Act, 2002, and the role of the CCI in ensuring fair competition in the market. Combining parties must ensure that their combination complies with the Act and seek the approval of the CCI to avoid any potential penalties or adverse effects on the market.

2. **Reliance Industries Limited (RIL) and Future Group**

   In August 2020, Reliance Industries Limited (RIL) announced its plans to acquire the retail and logistics assets of Future Group in a deal worth $3.4 billion. The deal involved the transfer of Future Group's retail, wholesale, logistics, and warehousing businesses to Reliance Retail Ventures Limited (RRVL), a subsidiary of RIL.

   The Competition Commission of India (CCI) initiated an investigation into the combination under Section 6(2) of the Competition Act, 2002, which empowers the CCI to examine any combination that is likely to cause an appreciable adverse effect on competition within the relevant market in India.

   After conducting a detailed analysis of the transaction, the CCI approved the deal subject to certain conditions. The CCI imposed several conditions to ensure that the combination did not result in any adverse impact on competition in the relevant market, particularly in the retail and e-commerce sectors.

One of the key conditions imposed by the CCI was that the deal could not lead to an exclusive supply agreement between RIL and Future Group, which could have resulted in an unfair advantage for Reliance in the retail market. The CCI also mandated that Future Group maintain a level playing field for all sellers on its platforms and that it continues to operate independently of RIL.

However, Amazon, which had a 49% stake in Future Coupons, a promoter group entity of Future Retail, approached the Singapore International Arbitration Centre (SIAC) to seek a stay on the Future-Reliance deal. Amazon argued that Future Group had breached the terms of their agreement by selling its assets to Reliance without seeking Amazon's consent.

The SIAC ruled in favor of Amazon and issued an interim stay on the Future-Reliance deal. The matter is currently under litigation in various Indian courts.

This case highlights the complexities involved in assessing the impact of combinations on competition, particularly in the context of the rapidly evolving e-commerce and retail sectors. It also underscores the need for careful consideration of the legal implications of agreements between companies, and the importance of adhering to contractual obligations.

LESSON ROUND-UP

- A Company Secretary can appear as an authorized representative before NCLT, Competition Commission of India (CCI), Securities Appellate Tribunal (SAT), Telecom Regulatory Authority of India (TRAI) and various other Tribunals.
- Appearance before other regulatory and quasi-judicial authorities may be required in various legal matters.
- These authorities include the National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), Competition Commission of India (CCI), Securities and Exchange Board of India (SEBI), and various other tribunals, commissions, and authorities.
- The appearance before regulatory and quasi-judicial authorities requires thorough preparation, compliance with procedural rules, professional conduct during the proceedings, and compliance with any orders or directions given by the authority.
- The right to legal representation is a fundamental right that is recognized in most legal systems around the world. This right ensures that individuals have access to legal counsel and representation, particularly in legal proceedings where their rights or interests are at stake.
- In many legal systems, the right to legal representation is enshrined in law and guaranteed by the constitution. The right to legal representation is essential for several reasons. First, it helps to ensure that legal proceedings are fair and just.
- Under the Companies Act, 2013, the right to legal representation is recognized and protected in certain situations. The Act allows for companies to be represented in legal proceedings by authorized representatives, such as Company Secretaries, who are appointed by the company.
- Section 432 of the Companies Act, 2013 dealing with right to legal representation envisages that the applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.

- Under the Companies Act, 2013, there are various situations where a person may be required to appear before regulatory or quasi-judicial authorities. These appearances may be required in the context of compliance and enforcement proceedings, such as investigations, inspections, and adjudication of disputes.
- The ROC is a regulatory authority responsible for administering the provisions of the Companies Act, 2013. Companies and their officers may be required to appear before the ROC in relation to various compliance matters, such as filing of returns and other documents, inspection of books and records, and verification of registered office address.
- The NCLT is a quasi-judicial body that adjudicates disputes and grievances related to companies and their affairs. Parties may be required to appear before the NCLT in various types of proceedings, such as merger and acquisition approvals, insolvency and bankruptcy proceedings, and disputes related to the interpretation of the Companies Act, 2013.
- The SFIO is a specialized investigating agency that is empowered to investigate cases of fraud and financial irregularities related to companies. Parties may be required to appear before the SFIO in connection with investigations related to corporate fraud, money laundering, and other financial crimes.
- SEBI is a regulatory authority that is responsible for regulating and overseeing the securities market in India. Companies and individuals may be required to appear before SEBI in connection with various compliance and enforcement matters, such as insider trading, market manipulation, and disclosure requirements.
- Section 17 of the Telecom Regulatory Authority of India (TRAI) Act, 1997 authorizes Company Secretaries to present his or its case before the Appellate Tribunal. As per the Explanation appended to the Section ‘Company Secretary’ means a Company Secretary as defined in clause (c) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of Section 6 of that Act.
- Sections 35 of the Competition Act, 2002 authorises Company Secretaries in practice to appear before Competition Commission of India.
- Competition Act, 2002 provides a number of factors to be considered by the Competition Commission of India in determining appreciable adverse effect on competition.
- The Competition Act, 2002 is the primary legislation governing competition law in India. The Competition Commission of India (CCI) is the regulatory body responsible for enforcing competition law in India.
- The Real Estate (Regulation and Development) Act, 2016 (RERA) is a legislation enacted by the Indian Parliament to regulate and promote the real estate sector.
- The Regional Director is a statutory authority appointed by the Central Government under the Companies Act, 2013. The Regional Director has the power to hear appeals against orders and decisions of the Registrar of Companies (RoC), which is the authority responsible for the registration of companies under the Act.
- Registrars of Companies (ROCs) appointed under Section 396 of Companies Act, 2013 are vested with the primary duty of registering companies in States and Union Territories and ensuring that such companies comply with statutory requirements under the Act.
- The Securities Appellate Tribunal (SAT) is an appellate tribunal established under the Securities and Exchange Board of India (SEBI) Act, 1992, to hear appeals against orders passed by SEBI or its officers.

- As per Section 15T of the SEBI Act, 1992, any person aggrieved by an order of the Securities Exchange Board of India (Board) made under the SEBI Act, 1992 or the rules or regulations made thereunder; or by an order made by an adjudicating officer under the SEBI Act; or by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.
- The Income Tax Act, 1961 (the Act) is the primary legislation that governs the taxation of income in India. The Act provides for various appellate authorities to hear appeals and review orders passed by lower tax authorities.
- The High Court has the jurisdiction to hear appeals against the orders passed by the ITAT.
- The Supreme Court of India is the highest appellate authority under the Act. It can hear appeals against the orders passed by the High Court on questions of law.
- The appellate authorities play a critical role in ensuring the effective implementation of the Competition Act, 2002, and providing a mechanism for parties to challenge orders passed by the CCI or the DG.
- Corporate Insolvency Resolution Process (CIRP) is a legal process that helps financially distressed companies to restructure or liquidate their assets to repay their debts to creditors.

GLOSSARY

Appearance: Appearance before other regulatory and quasi-judicial authorities may be required in various legal matters.

Legal Representation: It refers to the right of a person to be represented by a Company Secretary or an advocate in legal proceedings before a court, tribunal, or other judicial or quasi-judicial authority.

Quasi-Judicial authority: A quasi-judicial authority is an administrative body or agency that has been granted the power to make decisions that affect the legal rights, duties, or privileges of individuals or entities.

National Company Law Tribunal (NCLT): The NCLT is a quasi-judicial body that adjudicates disputes and grievances related to companies and their affairs. Parties may be required to appear before the NCLT in various types of proceedings, such as merger and acquisition approvals, insolvency and bankruptcy proceedings, and disputes related to the interpretation of the Companies Act, 2013.

National Company Law Appellate Tribunal (NCLAT): The NCLAT is a quasi-judicial body established under the Companies Act, 2013, and also acts as the appellate tribunal for competition-related matters. The NCLAT hears appeals against orders passed by the Competition Commission of India (CCI) and orders of the Director-General (DG) of the CCI. The NCLAT has the power to confirm, modify, or set aside any order passed by the CCI or the DG.

Competition Commission of India (CCI): The Competition Commission of India (CCI) is a statutory body established by the Indian government under the Competition Act, 2002. The CCI is responsible for promoting and ensuring fair competition in the Indian market and preventing practices that adversely affect competition.

Securities and Exchange Board of India (SEBI): SEBI is a regulatory authority that is responsible for regulating and overseeing the securities market in India. Companies and individuals may be required to appear before SEBI in connection with various compliance and enforcement matters, such as insider trading, market manipulation, and disclosure requirements.

Registrar of Companies (ROC): The ROC is a regulatory authority responsible for administering the provisions of the Companies Act, 2013. Companies and their officers may be required to appear before the ROC in relation to various compliance matters, such as filing of returns and other documents, inspection of books and records, and verification of registered office address.

Serious Fraud Investigation Office (SFIO): The SFIO is a specialized investigating agency that is empowered to investigate cases of fraud and financial irregularities related to companies. Parties may be required to appear before the SFIO in connection with investigations related to corporate fraud, money laundering, and other financial crimes.

Telecom Regulatory Authority of India (TRAI): The Telecom Regulatory Authority of India (TRAI) is an independent regulatory body established by the Indian government in 1997 under the Telecom Regulatory Authority of India Act, 1997. The TRAI is responsible for regulating the telecommunications sector in India, including telephony, broadcasting, and cable services.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Describe key provisions related to appearance under the Companies Act, 2013.
2. Can a Company Secretary appear before Real Estate (Regulation and Development) Act, 2016? Comment.
3. What are the different Appellate Authorities under the Companies Act, 2013?
4. Describe the Appellate Authorities under the Income-Tax Act, 1961.
5. Enumerate key considerations for the professionals appearing under The Reserve Bank of India Act, 1934.

LIST OF FURTHER READINGS

- Bare Act of The Companies Act, 2013
- Bare Act of The TRAI Act, 1997
- Bare Act of The SEBI Act, 1992
- Bare Act of The Income Tax Act, 1961
- Bare Act of The Competition Act, 2002
- Bare Act of Real Estate (Regulation and Development) Act, 2016

OTHER REFERENCES (Including Websites/Video Links)

- https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks.html#
- https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=3&smid=0
- https://incometaxindia.gov.in/pages/acts/income-tax-act.aspx

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PROFESSIONAL PROGRAMME
DRAFTING, PLEADINGS & APPEARANCES
GROUP 1 • PAPER 2

(*This test paper is for practice and self-study only and not to be sent to the Institute*)

Time allowed: 3 hours *Maximum Mark: 100*

Answer all Questions

PART I: DRAFTING AND CONVEYANCING

Question No. 1

(a) Zenith mortgages and transfers his property to Jacob with a condition that if he cannot pay Rs. 1 Crore along with interest at 12% per annum within a period of 1 year from 1st April, 2024, the property mortgaged is to be treated as Sale. However, if Zenith will pay the principal amount on or before 31st March, 2025, the sale shall become absolute. What kind of mortgage is suitable in the given situation? Draft an appropriate deed of mortgage for this purpose. Assume other necessary facts.

(5 marks)

(b) Ankush and Agar Upper LLP entered into a Service Contract in which Ankush will provide App development support and other services to the LLP on payment on the basis of a certain criteria. A dispute arose between the parties relating to alleged deficient services by Ankush. At later stage, they agreed for settlement of disputes through Arbitration. However, there was no clause in the above mentioned agreement pertaining to resolution of disputes through Arbitration.

Draft:

(i) An Arbitration Agreement for this purpose.

(ii) An Agreement of Reference to Sole Arbitrator.

(3+2= Total 5 marks)

(c) HR Head of LHTD Limited intends to recruit 1000 Customer Service Executives in the company. You are the Company Secretary of LHTD Limited. The HR Head has requested you to prepare a specimen agreement for this purpose. The Service Contract is to be signed by the Deputy Manager (HR) on behalf of the Company.

Prepare a Specimen Service Agreement for the Company.

(5 marks)

(d) You are a Company Secretary working with National Stock Exchange of India Ltd. (NSE). A trading member has been expelled by NSE. The chief manager has requested you to prepare a public notice for expulsion of the member and facility of online and offline lodging of the claim. Prepare the public notice. Assume other necessary facts.

(5 marks)

(e) ABC Limited a public limited company has been awarded a tender for supply of telephone instruments by a Statutory Authority. The statutory authority has asked for a Bank Guarantee in case the company is unable to supply the instruments. Prepare a Deed of Bank Guarantee for this purpose. Assume other necessary facts.

(5 marks)

Question No. 2

(a) You are a Practicing Company Secretary rendering your services across the country. M-DARS LLP has approached you to prepare a notice against Rahesh, a party whose cheque got dishonored for making a demand for the payment of the said amount of money, within fifteen days of the receipt of the said notice. The amount of cheque was Rs. 2,50,00,000/-.

Prepare a draft notice for this purpose. Assume other necessary facts.

(5 marks)

(b) Draft a Board Resolution for approval and adoption of CSR Policy.

(5 marks)

(c) Distinguish between Ordinary Resolution and Special Resolution.

(5 marks)

Question No. 3

(a) Makesh, Ruhal and Kohal intends to incorporate a Limited Liability Partnership(LLP). The proposed object of the LLP is manufacturing and assembling of Computers. Draft a Specimen of LLP Agreement. Assume other necessary facts.

(8 marks)

(b) Ankesh is the holder of 5,000 shares of Techotech Private Limited. Rankesh intends to purchase these shares at a price of Rs. 5,000/- per share. Ankesh has also agreed to sell the shares on this price. The sale of shares is also not restricted by the MOA and AOA of the company. Draft a Share Purchase Agreement between the company, Ankesh and Rakesh. Assume other necessary facts.

(7 marks)

Attempt all parts of either Q. No. 4 or Q. No. 4A

Question No. 4

(a) Distinguish between Simple Mortgage and English Mortgage.

(b) Is Registration of a Power of Attorney Compulsory? Draft a specimen power of attorney for negotiating and selling immovable property. Assume other necessary facts.

(c) Draft a specimen resolution of the members authorizing the company to make Investments, give Loans, Guarantees and provide security under Section 186 of the Companies Act, 2013. Assume other necessary facts.

(5 marks each)

OR (Alternate question to Q. No. 4)

Question No. 4A

(i) All agreements are contracts if they are made in compliance with section 10 of the Indian Contract Act, 1872. Explain the essential conditions as provided under the said provision? If the consent to an agreement is caused by coercion, what is its effect on the agreement as per Indian Contract Act, 1872?

(5 marks)

(ii) Ankesh wants to gift Anil a flat located in Mumbai. Whether this property is required to be registered compulsorily. If yes, where it should be presented for registration? Ankesh and Anil also does not know the value of the Property and therefore, want to apply to have the opinion of officer relating to the duty payable. Can the parties apply for adjudication of Stamp Duty?

Explain with the help of relevant provisions.

(5 marks)

(iii) Distinguish between Document Management and Contract Management.

(5 marks)

PART II: PLEADINGS AND APPEARANCES

Question No. 5

(a) XYZ Company Private Limited is in the business of providing rental accommodations on monthly basis to the tenants. Abhilas has taken a premises of the company on rent. It has been noticed by the officers of the company that Abhilas has damaged the property and also not keeping the property in good condition. In this regard, the Legal Head of the organization has requested you to prepare a plaint for Suit for Ejectment in the appropriate Court.

Prepare the plaint. Assume other necessary facts.

(5 marks)

(b) XYZ Ltd. is company incorporated under the provisions of the Companies Act, 2013. The company filed a suit for recovery of Rs. 15 lacs together with interest at the rate of 12% per annum and the cost of the suit, before the District Judge. The learned District Judge dismissed the appellant's suit on the ground that the evidence led by the parties does not establish the claim of the plaintiff. Prepare a Specimen form of Appeal to be filed with the High Court of Delhi. Assume other necessary facts.

(5 marks)

(c) Briefly explain Reference and Revision under the Bharatiya Nagarik Suraksha Sanhita, 2023 with the help of relevant provisions.

(5 marks)

Attempt all parts of either Q. No. 6 or Q. No. 6A

Question No. 6

(a) Prepare a specimen Affidavit of Creditor in proof of his debt in Proceeding for the Liquidation of Citrus Arc Private Limited. Assume other necessary facts.

(5 marks)

(b) A scheme involving the transfer of shares of in a company (the transferor company) to another company (the transferee company) has been duly approved by the holders of 95% in value of the shares whose transfer is involved. Draft a notice in Form No. CAA.14 for any dissenting shareholders stating that it desires to acquire his shares.

(5 marks)

(c) SEBI found that the company ZYX Private Limited has violated various regulations of SEBI (LODR) Regulations, 2015. The Board of Directors intends to apply for settlements for this Purpose. However, SEBI issued a notice of summary settlement. The Managing Director (MD) has asked you a Practising Company Secretary, about the matters that are eligible for summary settlement.

Prepare a note for the MD.

(5 marks)

OR (Alternate question to Q. No. 6)

Question No. 6A

(i) The adjudging officer issued a show cause notice to the company for non-compliance of section 135 of Companies Act, 2013. The company replied to the notice by accepting the non-compliance with a request to take lenient view while awarding the penalty. However, maximum amount of penalty was levied by the Adjudicating Officer. Company intends to file an appeal.

Prepare a note for the company:

(A) informing factors the adjudicating officer shall have due regard to.

(B) the provisions relating to appeal against the order of the adjudicating officer and time limit for the appeal.

(5 marks)

(ii) XYZ Limited has received a show cause notice from Competition Commission of India(CCI) that Joint Venture Agreement has caused an appreciable adverse effect on competition within the relevant market in India. CCI called upon the company to respond within thirty days of the receipt of the notice. The CEO of XYZ Limited knows a very renowned Company Secretary who a Key Managerial Personnel in ABC Limited. The renowned company secretary was also a Practising Company Secretary before being employed by ABC Limited.

The CFO and Company Secretary of XYZ Limited contends that the renowned company secretary is not eligible to present its case before the Commission.

You as a Practising Company Secretary, advice the company quoting the relevant provisions.

(5 marks)

(iii) What are the duties of a Company Secretary as a pleader towards the tribunal before which he/she is representing his/her client?

(5 marks)

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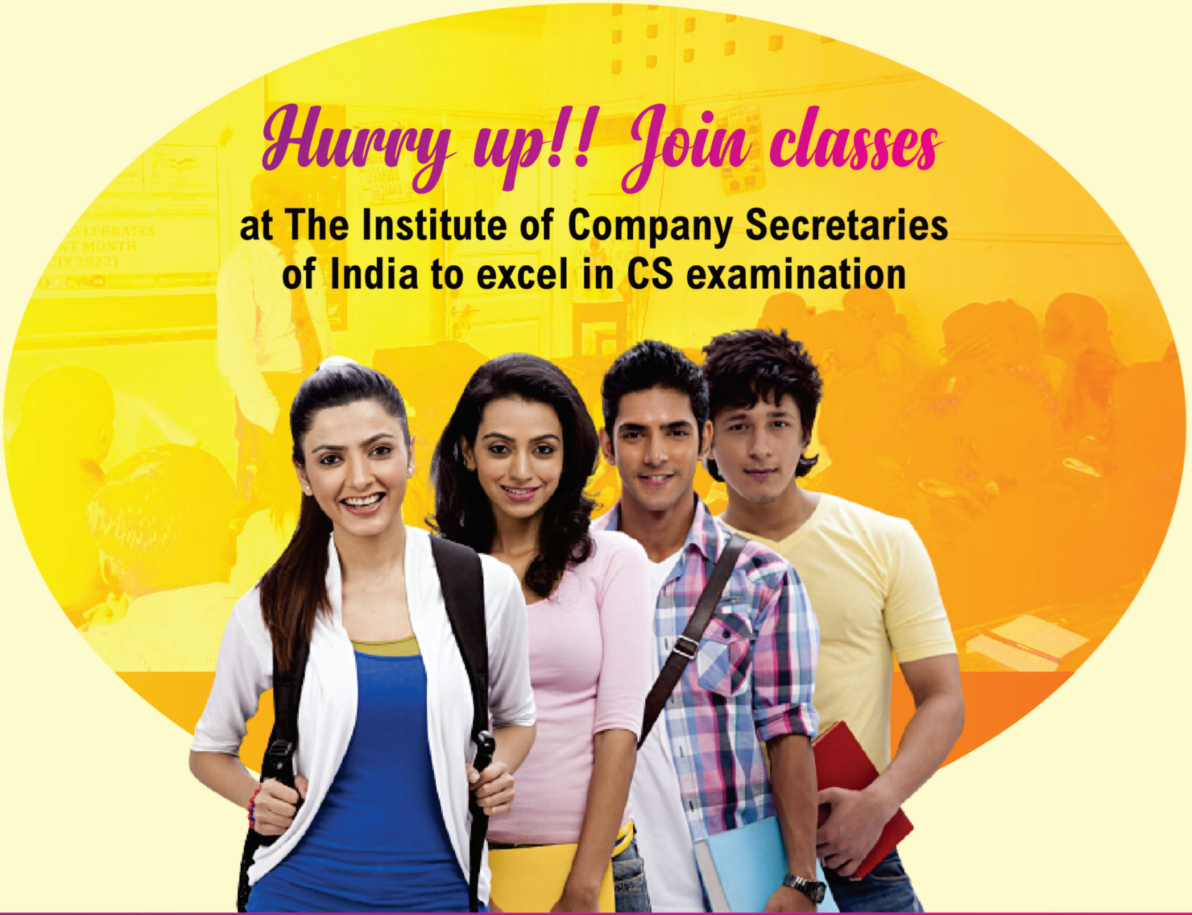

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